

IN THE SUPREME COURT OF NEW SOUTH WALES No.

of 2025

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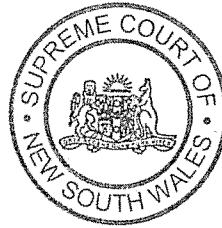
DIVISION: EQUITY

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LIST: CORPORATIONS

2 OCT 2025

REGISTRY: SYDNEY



IN THE MATTER OF FIDUCIAN INVESTMENT MANAGEMENT SERVICES LIMITED
ABN 28 602 441 814

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

FIDUCIAN INVESTMENT MANAGEMENT SERVICES LIMITED

ABN 28 602 441 814

Defendant

STATEMENT OF CLAIM

Summary of claim

- A. The defendant, Fiducian Investment Management Services Limited (**FIMS**) was a provider of funds management and investment services, including in respect of a suite of registered managed investment schemes (**Fiducian Funds**).
- B. One of the Fiducian Funds was the Diversified Social Aspirations Fund (**DSAF**). The DSAF was an "Environmental, Social and Governance" (**ESG**) fund, which was created in response to repeated requests from financial planners from Fiducian Financial Services (**FFS**) (**Fiducian Financial Planners**) for a fund that had ethical, "Social Responsible Investment" or ESG objectives. The DSAF made investments in two underlying funds that had different ESG exclusion materiality limits and restrictions. At no time during the period between 3 October 2019 and 30 May 2024 did any of the underlying funds exclude investments in shares or companies that derived revenue from fossil fuels.

- C. The product disclosure statement (**PDS**) for the DSAF was issued 11 times between 24 September 2014 and 31 May 2024 but was not prepared in accordance with FIMS's own quality assurance process. The PDS contained various ESG statements which represented to the effect that the DSAF would: (a) only make investments in companies that were considered to be positive for society and the environment; (b) would avoid making investments in companies that were considered to have activities that were harmful for society or the environment; and (c) avoid making investments in companies that were exposed to certain sectors or categories.
- D. The PDS also represented that FIMS would routinely monitor: (a) the portfolio exposure of the DSAF, including to ensure that it was in accordance with its ESG statements; and (b) the investment managers making investments on behalf of the DSAF to ensure that they maintained their investment styles and processes. Further, FIMS's compliance policies, systems, procedures, and risk management and investment governance frameworks, made FIMS responsible at all relevant times for (amongst other matters): (a) monitoring the investment managers of the underlying funds in which the DSAF was invested; (b) monitoring and properly processing complaints or concerns raised by investors with the DSAF; and (c) ensuring appropriate controls and processes were in place to ensure the DSAF complied with its Compliance Plan.
- E. Since at least 2019, through underlying funds, the DSAF invested in companies that were misaligned with the DSAF's objectives and the ESG statements made in its PDS. FIMS was on notice of this from at least May 2019 by complaints made by investors in the DSAF including in relation to shareholdings such as BHP and Woodside. Despite these matters, FIMS did not take any steps, or alternatively any adequate steps, to, among other things, amend or qualify the statements made in the PDS, or to change the underlying funds in which the DSAF was invested to ensure that they aligned with the DSAF's objective and/or ESG statements.
- F. To the extent the FIMS Investment Committee monitored the investments of the DSAF, it did so only by reference to its financial performance and not the DSAF's objectives or alignment with the ESG statements in the PDS. In this regard, FIMS failed to obtain a complete list of the underlying shareholdings from the underlying funds to enable it to ensure that the ESG statements made in the DSAF PDS were accurate.
- G. Having regard to the foregoing, and matters set out in the Statement of Claim, ASIC

alleges that between 3 October 2019 and 30 May 2024:

- the PDS contained representations relating to the DSAF's investments and the steps and processes which FIMS would undertake to monitor and manage the fund (including the alignment of the DSAF's investments with those objectives), that were liable to mislead the public in contravention of s 12DF of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- FIMS, in its capacity as a Responsible Entity of the DSAF, failed to act with care and diligence (as required by s 601FC(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**)), by failing to adequately monitor and manage the DSAF including: (a) failing to monitor or review the alignment of investments made by the investment managers of the underlying funds of the DSAF with the objectives of the DSAF; (b) failing to review, amend or appropriately qualify the PDS so that it was not false, misleading or deceptive; (c) failing to identify ESG risks and have adequate controls; and (d) failing to comply with its own risk management and compliance procedures.
- FIMS, in its capacity as a Responsible Entity of the DSAF, failed to comply with its compliance plan for the DSAF in contravention of s 601FC(1)(h) and/or s 601FC(1)(b) of the *Corporations Act*, by failing to handle complaints made by investors and/or financial planners in accordance with s 912A(2) of the *Corporations Act* and the Constitution of the DSAF.

- H. ASIC seeks declarations, pecuniary penalties and adverse publicity orders with respect to these contraventions of the ASIC Act and the Corporations Act.
- I. This summary is provided for assistance and is not intended to replace or supplant the pleaded claim set out below, and does not require the defendant to plead a response.

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A. INTRODUCTION

A.1. The parties

1. The plaintiff, Australian Securities and Investments Commission (**ASIC**), is a body corporate:
 - (a) established by s 7 of the *Australian Securities and Investments Commission Act 1989* (Cth);
 - (b) continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (c) able to sue in its corporate name by reason of s 8(1)(d) of the ASIC Act; and
 - (d) entitled under ss 1101B, 1317E, 1317G(1)(a) and 1317J of the *Corporations Act 2001* (Cth) (**Corporations Act**), s 12GBA(1) and 12GBB of the ASIC Act, s 75 of the *Supreme Court Act 1970* (NSW) (**Supreme Court Act**) and/or the Court's inherent jurisdiction to obtain declarations, payment of pecuniary penalties and other relief arising from contraventions of the Corporations Act and ASIC Act.
2. The defendant, Fiducian Investment Management Services Limited ABN 28 602 441 814 (**FIMS**), is, and in the period between 24 September 2014 and 31 May 2024 (the **Relevant Period**), was:
 - (a) a corporation within the meaning of the Corporations Act;
 - (b) able to be sued in its corporate name;
 - (c) either:
 - (i) a public company limited by shares; or
 - (ii) a wholly owned subsidiary of Fiducian Group Limited ABN 41 602 423 610 (**FGL**), a company publicly listed on the Australian Stock Exchange since 9 February 2015;
 - (d) from 27 February 2015, the holder of an Australian Financial Services Licence (**AFSL**) numbered 468211;
 - (e) by reason of paragraph 2(d), a "financial services licensee" within the meaning of s 761A of the Corporations Act until 19 October 2023 and s 9 of the Corporations Act since October 2023;
 - (f) from on or about 1 March 2015, carrying on a financial services business in

Australia within the meaning of s 911D of the Corporations Act; and

- (g) from 27 February 2015, authorised by its AFSL to carry on a financial services business to, among other things:
 - (i) operate registered managed investment schemes in its capacity as responsible entity.

Particulars

A. AFSL 468211, 27 February 2015, cl 1(a).

A.2. Fiducian Group

- 3. On or from 23 February 2015, the corporate group of which FIMS was a part (**Fiducian Group**), included the following wholly owned subsidiaries of FGL:
 - (a) Fiducian Portfolio Services Limited ABN 13 073 845 931 (**Fiducian Trustee**), the trustee of Fiducian Superannuation Fund, a registrable superannuation entity;
 - (b) Fiducian Financial Services Pty Ltd ABN 46 094 765 134 (**FFS**):
 - (i) the holder of an AFSL numbered 231103;
 - (ii) the business of which included providing financial planning services through a network of financial advisers (**Fiducian Financial Planners**);

Particulars

- A. The Fiducian Financial Planners include employees of FFS and franchisees of FFS.
- (c) Fiducian Business Services Pty Ltd ABN 16 063 433 367, the business of which included providing administration, professional services and distribution services to members of the Fiducian Group;
- (d) Fiducian Services Pty Ltd ABN 41 602 437 892 (**Administrator**), which:
 - (i) at all relevant times, was engaged by FIMS to provide services to it, including in relation to the day-to-day operation of the Fiducian Funds; and

Particulars

- A. Compliance Plan, 26 June 2017, cl 1.1.
- B. ASIC refers to and repeats paragraphs 4 to 10 below.

- (ii) at all relevant times, was the administrator of the Fiducian Investment Service.

Particulars

A. ASIC refers to and repeats paragraph 4(c) below.

B. FIDUCIAN INVESTMENT MANAGEMENT SERVICES LIMITED

B.1. Investment Services

4. From on or around 1 March 2015, FIMS:

- (a) was a provider of funds management and investment services;
- (b) was the responsible entity of a suite of registered managed investment schemes (**Fiducian Funds**);
- (c) was the operator of an Investor Directed Portfolio Service (**IDPS**) platform, known as the Fiducian Investment Service (or **FIS**);
- (d) through the FIS, enabled investors to:
 - (i) make investments in the Fiducian Funds and some sector and specialist funds managed by investment managers selected by FIMS; and
 - (ii) monitor their investments in the investments referred to in sub-paragraph (i) above,

(together, **FIMS Investment Services**).

B.2. Fiducian Funds

- 5. During the course of the Relevant Period, there were at least 14 Fiducian Funds.
- 6. As at 30 June 2024, FIMS had \$5.17 billion in assets under management across the Fiducian Funds.

Particulars

A. Industry funding lodgement, 25 September 2024.

- 7. During the Relevant Period, the funds within the Fiducian Funds were allocated and managed by FIMS using its “Manage-the-Manager” investment system (**Manage-the-Manager System**).
- 8. The Manage-the-Manager System was an investment approach applied by FIMS from time to time during the Relevant Period.

9. Under the Manage-the-Manager System, FIMS would allocate funds from the Fiducian Funds to multiple funds or investments (**Underlying Funds**) managed by different investment managers (**Underlying Manager**).

Particulars

- A. An Underlying Fund may include an index fund, or a bespoke mandate entered into between an Underlying Manager and FIMS.
10. At all times during the Relevant Period, in implementing the Manage-the-Manager System, FIMS was responsible for:
- (a) selecting the Underlying Funds and Underlying Managers in respect of each Fiducian Fund; and
 - (b) monitoring the performance of the Underlying Funds and Underlying Managers of each Fiducian Fund.

B.3. Investment Governance Framework

11. From at least June 2019 until the end of the Relevant Period, FIMS had in place a documented Investment Governance Framework.

Particulars

- A. The Investment Governance Framework was amended from time-to-time:
- Investment Governance Framework, June 2019;
 - Investment Governance Framework, June 2020;
 - Investment Governance Framework, March 2021;
 - Investment Governance Framework, May 2021;
 - Investment Governance Framework, November 2023;
 - Investment Governance Framework, February 2024.
12. The Investment Governance Framework, as in place from time-to-time:
- (a) subject to (b) below, constituted the totality of the systems, structures, policies, processes and people to address FIMS's responsibilities as regards the FIMS Investment Services; and

Particulars

- A. Investment Governance Framework, June 2019, cl 2.1.3;
Investment Governance Framework, June 2020, cl 2.1.3;
Investment Governance Framework, March 2021, cl 2.1.3;
Investment Governance Framework, May 2021, cl 2.1.3;
Investment Governance Framework, November 2023,
cl 2.1.3;
Investment Governance Framework, February 2024,
cl 2.1.3.
- (b) was to be read with reference to other “associated documents”, including the Risk Management Framework (**RMF**), Risk Appetite Statement (**RAS**), the Investment Risk Register and Investment Committee Charter.

Particulars

- A. Investment Governance Framework, June 2019, cl 2.3.1;
Investment Governance Framework, June 2020, cl 2.3.1;
Investment Governance Framework, March 2021, cl 2.3.1;
Investment Governance Framework, May 2021, cl 2.3.1;
Investment Governance Framework, November 2023,
cl 2.3.1;
Investment Governance Framework, February 2024,
cl 2.3.1.
 - B. For the Investment Committee Charter see paragraph 13(b) below.
13. At all times during the Relevant Period, FIMS’s governance framework was structured as follows:
- (a) the **FIMS Board**, which:
 - (i) had overall governance responsibility for the FIMS Investment Services offered by FIMS;
 - (ii) determined the composition of the Investment Committee, a sub-committee of the FIMS Board as pleaded at paragraph 13(b) below;
 - (iii) was responsible for monitoring and assessing the performance of the Investment Team as pleaded at paragraph 13(c) below;

- (iv) was responsible for approval of the investment objectives of each investment product or service offered through FIS, including the Fiducian Funds;
- (v) was responsible for ensuring compliance with all applicable legislative and regulatory requirements;
- (vi) was charged with overall responsibility for managing risk, including that adequate policies and internal controls and procedures were in place in relation to risk identification and management;

Particulars

- A. “Risk” is defined in ISO 31000 (2009) as the “effect of uncertainty on objectives”, RMF, June 2019, cl 1.9.
- (vii) was responsible for developing and maintaining an RMF for FIMS that:
 - (A) was appropriate to its size, business mix and complexity of business operations; and
 - (B) enabled implementation of risk management processes and approaches that appropriately managed different types of risks.

Particulars

- A. RMF, June 2017, cll 1.9, 3.1;
 RMF, June 2018, cll 1.9, 3.1;
 RMF, June 2019, cll 1.9, 3.1;
 RMF, June 2020, cll 1.9, 3.1;
 RMF, June 2021, cll 1.9, 3.1;
 RMF, June 2022, cll 1.9, 3.1;
 RMF, June 2023, cll 1.9, 3.1.
- B. At least since September 2015, the Board of Directors’ Charter of the FGL Board was adopted for the purposes of the FIMS Board – see letter from FIMS to ASIC dated 5 April 2024 in response to notice issued pursuant to s 912E of the Corporations Act.
- (viii) comprised, between 3 October 2019 and 30 May 2024 (**Contravention Period**), six members, including:

- (A) Inderjit Singh (**Mr Singh**), who was a director at all times;
- (B) Conrad Burge (**Mr Burge**), who was a director at all times and the Chair from on or around 27 August 2019; and
- (C) Paul Gubecka (**Mr Gubecka**), who was Company Secretary at all times.

Particulars

- A. Organisation Structure spreadsheet produced by FIMS on 5 December 2024 in response to a notice issued pursuant to s 33 of the ASIC Act.
- (b) the **Investment Committee**, a sub-committee of the FIMS Board, which:
- (i) operated in accordance with the Investment Committee Charter as amended from time-to-time;

Particulars

- A. Investment Committee – Corporate Charter, 13 February 2018;
Investment Committee – Corporate Charter, 11 February 2020;
Investment Committee – RE Charter, 14 November 2023;
Investment Committee – RE Charter, 13 February 2024.
- (ii) was provided with express delegation from the FIMS Board with respect to investment related determinations, including in relation to Fiducian Funds;
- (iii) was expected to meet at least quarterly or on an “as required” basis;

Particulars

- A. Investment Committee – Corporate Charter, 13 February 2018, cl 4.5.1;
Investment Committee – Corporate Charter, 11 February 2020, cl 4.5.1;
Investment Committee – RE Charter, 14 November 2023, cl 4.5.1;
Investment Committee – RE Charter, 13 February 2024, cl

4.5.1.

- (iv) was required to review reports provided by the Investment Team, and report its findings to the FIMS Board on a quarterly basis or on an “as required” basis;

Particulars

A. Investment Governance Framework, June 2019, cl 5.8.1;
Investment Governance Framework, June 2020, cl 5.8.1;
Investment Governance Framework, March 2021, cl 5.8.1;
Investment Governance Framework, May 2021, cl 5.8.1;
Investment Governance Framework, November 2023, cl 5.9.1;
Investment Governance Framework, February 2024, cl 5.9.1.

B. Investment Committee – Corporate Charter, 13 February 2018, cl 3.2.2;
Investment Committee – Corporate Charter, 11 February 2020, cl 3.2.2;
Investment Committee – RE Charter, 14 November 2023, cl 3.2.2;
Investment Committee – RE Charter, 13 February 2024, cl 3.2.2.

C. ASIC refers to and repeats paragraph 13(c) below.

- (v) was tasked with providing assurance to the FIMS Board that:
- (A) appropriate policies and procedures were in place to address investment-related responsibilities in connection with the FIMS Investment Services;
 - (B) investment-related duties required for the FIMS Investment Services were carried out with care, diligence and skill;
 - (C) an appropriate monitoring and oversight regime was in place to identify, report and action incidents and breaches, and that identified sources of investment risk were appropriately managed and monitored.

Particulars

- A. Investment Committee – Corporate Charter, 13 February 2018, cl 1.2.1;
 Investment Committee – Corporate Charter, 11 February 2020, cl 1.2.1;
 Investment Committee – RE Charter, 14 November 2023, cl 1.2.1;
 Investment Committee – RE Charter, 13 February 2024, cl 1.2.1.

- (vi) was required to conduct quarterly, half-yearly and annual reviews of the performance of the Fiducian Funds;
- (vii) was to monitor that all Fiducian Funds had a current product disclosure statement (**PDS**);
- (viii) was to monitor that the PDS for each Fiducian Fund accurately recorded the risks and characteristics of each Fiducian Fund;
- (ix) comprised, during the Contravention Period, four members, including:
 - (A) Mr Singh, who was a committee member at all times; and
 - (B) Mr Burge, who was a committee member at all times.

Particulars

- A. Organisation Structure spreadsheet produced by FIMS on 5 December 2024 in response to a notice issued by ASIC pursuant to s 33 of the ASIC Act.

- (c) the **Investment Team**, which:
 - (i) reported to the Investment Committee;
 - (ii) had day-to-day responsibility for the FIMS Investment Services, including the management of each of the Fiducian Funds;
 - (iii) was responsible for carrying out risk assessments of the Fiducian Funds by reference to relevant disclosure documents, including the PDS of each Fiducian Fund;
 - (iv) was responsible for ongoing management and monitoring of the investment strategies of the FIMS Investment Services as a whole and

for each investment product or service, including the Fiducian Funds;

- (v) was responsible for reporting on the asset allocation and performance of the Manage-the-Manager System offered by FIMS;
- (vi) was responsible for making recommendations to the Investment Committee in relation to:
 - (A) adding or removing a Fiducian Fund;
 - (B) adding or removing an Underlying Fund in respect of a Fiducian Fund;
 - (C) adding or removing an Underlying Manager in respect of a Fiducian Fund; and
- (vii) comprised, during the Contravention Period, various members, including:
 - (A) Mr Singh, who was a member at all times; and
 - (B) Mr Burge, who was a member at all times.

Particulars

- A. Organisation Structure spreadsheet produced by FIMS on 5 December 2024 in response to a notice issued pursuant to s 33 of the ASIC Act.

- (d) the **Head of Investments** (also known as the Investment Manager):
 - (i) was the head of the Investment Team;
 - (ii) attended quarterly meetings of Fiducian Financial Planners (known as “Planner Council” meetings);

Particulars

- A. Section 19 examination transcript of Mr Burge, T49.3-5, 14-20.

- (iii) prepared and issued quarterly Investment Management Reports to the FIMS Board;

Particulars

- A. The Investment Team was responsible for issuing the

Quarterly Investment Management Reports, and Mr Burge, in his capacity as Head of Investments, signed off on these reports, see for example, Investment Management Report, June Quarter 2020.

- (iv) was to monitor and recommend changes to FIMS Investment Services; and
- (v) was at all times during the Contravention Period, Mr Burge.

Particulars

- A. Mr Burge has been the Head of Investments since about 1999: AFSL Application, October 2014.

B.4. Risk Management Framework

- 14. From at least June 2017 to the end of the Relevant Period, the Fiducian Group RMF applied to FIMS, as amended from time-to-time.

Particulars

- A. RMF, June 2017, cl 1.4;
RMF, June 2018, cl 1.5;
RMF, June 2019, cl 1.4;
RMF, June 2020, cl 1.4;
RMF, June 2021, cl 1.4;
RMF, June 2022, cl 1.4;
RMF, June 2023, cl 1.4.
- 15. Since at least June 2017 to the end of the Relevant Period, the RMF constituted the totality of systems, structures, policies, processes and people within FIMS operations that identified, assessed, managed, mitigated and monitored all internal and external sources of inherent risk that could have had an adverse material impact on FIMS business operations or the interests of shareholders.

Particulars

- A. RMF, June 2017, cl 2.1;
RMF, June 2018, cl 1.4;
RMF, June 2019, cl 2.1;
RMF, June 2020, cl 2.1;

RMF, June 2021, cl 2.1;

RMF, June 2022, cl 2.1;

RMF, June 2023, cl 2.1.

16. The RMF:

- (a) comprised:
 - (i) a RAS;
 - (ii) a Risk Register; and
 - (iii) a designated Risk Management Function;
- (b) identified “risk categories” to the FIMS business, including:
 - (i) “Governance and Compliance risks”:
 - (A) which were defined as being “risks associated with the composition, quality and operation of the Board, adequacy of resources, policies and procedures applied to the management of the business and risks associated with monitoring and implementing legislative changes”; and
 - (B) from 2020 onwards, also included “risks associated with improper or inadequate advice given by a Financial Planner”;
 - (ii) “Investment Governance Risks”, which were defined as being “risks associated with investment governance framework to manage investments in the interests of its clients”; and
 - (iii) “Investments Risks”, which were defined as being “risks associated with investment of client funds to meet investment objectives”.

Particulars

- A. RMF, June 2017, cll 2.1 and 7.3;
- RMF June 2018, cll 2.1 and 7.3;
- RMF, June 2019, cll 2.1 and 7.3;
- RMF, June 2020, cll 2.1 and 7.3;
- RMF, June 2021, cll 2.1 and 7.3;
- RMF, June 2022, cll 2.1 and 7.3;
- RMF, June 2023, cll 2.1 and 7.3.

- (c) provided for how the inherent risk rating of a risk category was to be assessed;
- (d) provided for monitoring and oversight, including risk, compliance and incident and breach reporting policies and procedures;
- (e) defined and documented roles, responsibilities and formal reporting lines and structures for the management of risk categories through the Fiducian Group and all subsidiary business operations, including assigning the roles of Responsible Persons and Risk Owners;

Particulars

- A. "Responsible Persons" is defined in the RMF to include the Chief Risk Officer, General Counsel. From June 2017 to June 2019 (inclusive), the RMF defined "Responsible Persons" to include the Head of Investments. From June 2020 onwards, the RMF defined "Responsible Persons" to include the Executive Chairman of FIMS:
 RMF, June 2017, cl 1.9;
 RMF, June 2018, cl 1.9;
 RMF, June 2019, cl 1.9;
 RMF, June 2020, cl 1.9;
 RMF, June 2021, cl 1.9;
 RMF, June 2022, cl 1.9;
 RMF, June 2023, cl 1.9.
 - B. "Risk Owner" is a reference to "managers":
 RMF, June 2017, cl 6;
 RMF, June 2018, cl 6;
 RMF, June 2019, cl 6;
 RMF, June 2020, cl 6;
 RMF, June 2021, cl 6;
 RMF, June 2022, cl 6;
 RMF, June 2023, cl 6.
- (f) assigned responsibility to all FIMS staff to identify breaches or potential breaches and reporting them in accordance with the Incident and Breach Reporting Policy.

Risk Appetite Statement

17. The RAS, a separate documented policy in place from around September 2015 to the end of the Relevant Period:
 - (a) identified risk categories;
 - (b) set out FIMS's risk appetite ratings or risk tolerances for each risk category;
 - (c) provided that the risk appetite for each risk category was to be noted in the Risk Register; and
 - (d) was to be reviewed at least annually by the Board.
18. The documented RAS, as amended from time-to-time during the Relevant Period:
 - (a) identified the following categories of risk:
 - (i) "Governance risks", defined as "risks associated with the composition, quality and operation of the Board, adequacy of resources, and the policies and procedures applied to the management of the business";
 - (ii) "Investment Government and investment risks", defined as "risks associated with investment governance framework to manage investments in the interests of its clients. In addition, risks associated with investment of client funds to meet investment objectives";

Particulars

- A. RAS, November 2017, cl 2.3;
 RAS, November 2018, cl 2.3;
 RAS, November 2019, cl 2.3;
 RAS, November 2020, cl 2.3;
 RAS, November 2021, cl 2.3;
 RAS, November 2022, cl 2.3;
 RAS, November 2023, cl 2.3.
- (b) applied a risk appetite of "low" for the "Governance risks" category; and
- (c) applied a risk appetite of "moderate" for the "Investment Government and investment risks" category.

Particulars

- A. RAS, November 2017, cl 2.5;

RAS, November 2018, cl 2.5;

RAS, November 2019, cl 2.5;

RAS, November 2020, cl 2.5;

RAS, November 2021, cl 2.5;

RAS, November 2022, cl 2.5;

RAS, November 2023, cl 2.5.

Risk Registers

19. The “risk registers” in place between 20 May 2018 and 30 May 2024 were:

- (a) a “FIMS Risk Register” dated 8 August 2018;
- (b) five “Fiducian Investments Risk Registers” dated between 2018 and 2024;

Particulars

- A. 30 May 2018;
- 30 June 2022;
- 31 December 2022;
- 30 September 2023;
- 30 May 2024.

- (c) eighteen “FGL Risk Registers” dated between 2018 and 2024; and

Particulars

- A. 30 May 2018;
- 30 September 2018;
- 31 December 2018;
- 31 March 2019;
- 30 September 2019;
- 31 March 2020;
- 30 September 2020;
- 31 December 2020;
- 30 September 2021;
- 31 December 2021;
- 30 June 2022;
- 31 December 2022;
- 31 March 2023;
- 30 June 2023;

30 September 2023;

31 December 2023;

31 March 2024;

30 May 2024.

(d) an undated “Custody Transition – Risk Register”,

(together, **Risk Registers**).

20. The Risk Registers contained:

(a) no controls, or alternatively no adequate controls, to ensure compliance with environmental, social and governance (**ESG**) investing, or Ethical Investment Objectives; and/or

(b) no controls, or alternatively no adequate controls, for monitoring the investments of Underlying Funds or Underlying Managers in respect of Fiducian Funds for compliance with ESG investing, or Ethical Investment Objectives.

Particulars

A. “Ethical Investment Objectives” is defined at paragraph 44 below.

B.5. Compliance Plan for the Fiducian Funds

21. Since at least 3 July 2017 to the end of the Relevant Period, a Master Compliance Plan was in place which applied to all Fiducian Funds (**Compliance Plan**).

Particulars

A. Notification of Amendment to Compliance Plans Letter from FIMS to ASIC dated 3 July 2017 and Compliance Plan dated 26 June 2017, cll 5.5-5.7.

B. Two versions of the Compliance Plan were operative during the Contravention Period, being:
Compliance Plan, 14 May 2019;
Compliance Plan, 1 July 2020.

22. Relevantly, the Compliance Plan:

(a) sets out the measures that FIMS was to apply in operating the Fiducian Funds to ensure compliance with the Corporations Act and the Constitutions of the

Fiducian Funds, including through the:

- (i) “Quality Control Assessment Program” and “Tickit” system, as pleaded at paragraphs 24 and 25 below; and
- (ii) “Reporting to Management” processes; and
- (iii) monitoring of the Administrator.

Particulars

- A. Compliance Plan, 26 June 2017, cl 10.1 to 10.3;
Compliance Plan, 14 May 2019, cl 10.1 to 10.3;
Compliance Plan, 1 July 2020, cl 10.1 to 10.3.
- (b) identified FIMS’s legal obligations relevant to the operation of the Fiducian Funds;
- (c) identified the bodies or functions with compliance responsibilities, or “Compliance Obligations” pursuant to the Compliance Plan, including:

Particulars

- B. “Compliance Obligations” is defined in the 14 May 2019 Compliance Plan to mean “the obligations allocated to the relevant Compliance Executive that details the requirements to be satisfied by that Compliance Executive’s Operational Unit to ensure the Responsible Entity complies with the Corporations Act, the Constitution and the Compliance Plan, which are contained in Tickit.” The Compliance Plan dated 1 July 2020 has substantially the same definition, however begins “the regulatory and risk obligations allocated to the relevant Compliance Executive....”.
- (i) the Audit Risk and Compliance Committee (**ARCC**) for FIMS as the “compliance committee” for the Fiducian Funds;

Particulars

- A. ASIC refers to and repeats paragraphs 42 below
- (ii) “Compliance Executives”, being a person within the Management Team responsible for the day-to-day activities and operations of one or more

operational units;

Particulars

- A. ASIC refers to and repeats paragraphs 42 below
- (iii) “Compliance Manager”, being the most senior person responsible for ensuring FIMS and the Fiducian Funds complied with the “Managed Investments Law”; and

Particulars

- A. ASIC refers to and repeats paragraphs 42 below
- (iv) the FIMS Board;
- (d) identified the engagement of an “Administrator”, being Fiducian Services Pty Ltd as pleaded at paragraph 3(d) above, to provide services to the Fiducian Funds, including services to give effect to the compliance function;
- (e) identified the key operational compliance measures in accordance with s 601HA of the Corporations Act, including that:

Particulars

- A. The compliance measures appear in Part C of the Compliance Plan:
 - Compliance Plan, 26 June 2017;
 - Compliance Plan, 14 May 2019;
 - Compliance Plan, 1 July 2020.
- (i) FIMS was to invest investors’ monies consistent with the Constitution and PDS of a Fiducian Fund, and the Corporations Act, and that the Investment Committee was responsible for monitoring compliance;

Particulars

- B. Compliance Plan, 26 June 2017, cl 11.7;
- Compliance Plan, 14 May 2019, cl 11.7;
- Compliance Plan, 1 July 2020, cl 12.7.
- (ii) FIMS was not to distribute a PDS, marketing materials or other information, that was misleading or deceptive, or otherwise would mislead investors when making their decision to invest in a Fiducian

Fund; and

Particulars

- A. Compliance Plan, 26 June 2017, cl 11.10;
Compliance Plan, 14 May 2019, cl 11.10;
Compliance Plan, 1 July 2020, cl 12.10.
- (iii) FIMS was to handle complaints made by Unitholders consistently with the obligations under the Corporations Act and the Constitution of the Fiducian Fund.

Particulars

- A. Compliance Plan, 26 June 2017, cl 11.16;
Compliance Plan, 14 May 2019, cl 11.16;
Compliance Plan, 1 July 2020, cl 12.16.
23. At all times between 3 July 2017 and the end of the Relevant Period, the obligations pleaded at paragraph 22(e) above, and otherwise stated in the Compliance Plan, were:
- (a) drafted at a level of generality such that they applied to all Fiducian Funds in place from time-to-time; and
 - (b) not drafted or designed to meet the specific or distinct risks arising in relation to the Diversified Social Aspirations Fund (**DSAF**), including as a result of its exposure to ESG investments and its Ethical Investment Objectives.

B.6. Quality Control Assessment Program

The Tickit System

24. From around August 2015 to the end of the Relevant Period, the Fiducian Group used a risk and compliance management program called Tickit, which maintained records of the Risk Registers, Compliance Obligations and events (as defined in the RMF) in electronic form.
25. The purpose of Tickit included to:
- (a) enable reports to be provided to the Boards, Committees and Management of the Fiducian Group and its subsidiaries, including FIMS, at regular intervals;
 - (b) enable Risk Owners to sign-off on the effectiveness of the risk controls in their area of responsibility;

- (c) facilitate the risk and compliance self-assessment program of the Compliance Managers and Compliance Executives as part of the Quality Control Assessment Program;
- (d) record FIMS's obligations or controls and assign them to a "Responsible Person";
- (e) monitor whether the "Responsible Person" had met the obligation or performed the control function assigned to them;
- (f) enable the Administrator to:
 - (i) discharge its obligation to review and report on the responses provided by the Compliance Managers and Compliance Executives to ensure FIMS complied with its regulatory requirements;
 - (ii) collate and report on a quarterly basis the results of the Tickit responses;
 - (iii) facilitate its employees to report compliance issues to the General Counsel via Tickit and enable the General Counsel to investigate, take rectification steps or escalate the issue to Compliance Executives and the Managing Director or FIMS Executive Chairman;
- (g) enable quarterly review of the Tickit responses by the General Counsel and the FIMS ARCC and the FIMS Board; and
- (h) enable reporting of compliance issues to the General Counsel.

Quality Assurance Policy – External Communications

26. From around June 2017 to the end of the Relevant Period, FIMS had in place a documented Quality Assurance Policy (**QAP**), which required certain External Communications to pass through the "**Quality Assurance Process**", including the following documents:

- (a) all adviser communications (non-standard);
- (b) all client communications (non-standard);
- (c) all marketing advertisements and communications;
- (d) presentation materials (PowerPoint presentations, handouts etc);

and

- (e) technical papers.

(External Communication).**Particulars**

- A. External Communications is defined in the Quality Assurance Policy as “any documentation relating to the Fiducian Group that is prepared for a third party” and includes the examples given above:
 QAP, June 2017, cll 1.2.1, 5.1.1;
 QAP, June 2020, cll 1.2.1, 5.1.1;
 QAP, June 2023, cll 1.2.1, 5.1.1.

27. The Quality Assurance Process comprised the following steps:

- (a) the “Originator” (being the person responsible for the production of the External Communication) was to prepare the External Communication to a standard that may be reasonably expected from a professional performing the role of an Originator at Fiducian;
- (b) the Originator was to complete the Document Production Checklist (**DPC**) and attach the External Communication to the DPC;

Particulars

- A. QAP, June 2017, cl 4;
 QAP, June 2020, cl 4;
 QAP, June 2023, cl 4.
- B. The DPC is at Annexure 1 of the QAP.
- (c) the External Communication was then peer-reviewed and amended as required before being signed off by the Originator (or appropriate member of management);
- (d) the Originator was then to complete the Quality Assurance Sign-off (**QAS**) and attach the DPC, the final draft of the External Communication and all iterations with marked corrections;

Particulars

- A. QAP, June 2017, cl 4;
 QAP, June 2020, cl 4;
 QAP, June 2023, cl 4.

B. The QAS is at Annexure 2 of the QAP.

- (e) the QAS was provided to an appropriate member of management and each document examined and signed off; and
- (f) after QAS sign-off:
 - (i) the External Communication could be sent for production;
 - (ii) the External Communication was to be recorded in the Quality Assurance Register; and
 - (iii) the QAS, the DPC and a copy of the approved document (or External Communication) were to be filed in the Quality Assurance Document Master File.

Particulars

A. The Quality Assurance Document Master File is maintained by the Legal Department.

28. From at least around June 2017:

- (a) the Quality Assurance Process was to be observed; and
- (b) Senior Managers could not sign-off on an External Communication if it was prepared by them or if they had substantial input into it.

Quality Assurance Register

29. In the period between 30 May 2018 and 30 May 2024 FIMS had in place the following “Quality Assurance Registers”:

- (a) a Quality Assurance Register dated 5 June 2018;
- (b) a Quality Assurance Register dated 7 August 2019; and
- (c) a Quality Assurance Register dated 18 March 2020.

Particulars

A. FIMS letter to ASIC dated 13 August 2025 in response to s 33 Notice dated 11 July 2025.

(together, the **Quality Assurance Registers**).

30. The Quality Assurance Registers contain:

- (a) during the Contravention Period, no entries relating to the PDS for the DSAF Fund or any Fiducian Fund; and

Particulars

A. Quality Assurance Register, 7 August 2019, Doc No. A3545.

- (b) no entries relating to the “DSAF Research Notes” provided by Fiducian Financial Planners to investors;
- (c) no entries relating to the “Supporting Information” documents provided by Fiducian Financial Planners;
- (d) one entry relating to the “May 2023 Presentation”.

Particulars

A. ASIC refers to and repeats paragraph 103 below.

The PDS Production Process

- 31. The **PDS Production Process** applied to the production of a PDS for a Fiducian Fund during the Relevant Period.
- 32. The PDS Production Process imposed additional steps to the Quality Assurance Process as pleaded at paragraphs 27 and 28 above, as follows:
 - (a) first, prior to the Quality Assurance Process, the Fiducian Group’s Legal and Compliance function was to:
 - (i) produce the PDS and ensure that it complied with the “PDS Checklist”, which identified specific requirements directed to meeting obligations imposed on FIMS pursuant to the Corporations Act; and
 - (ii) liaise with all relevant stakeholders to ensure accuracy and obtain all necessary consents in relation to the produced PDS;

Particulars

A. The Legal and Compliance function is an operational unit within the Fiducian Group which provides services to FIMS: Compliance Plan, cl 1.1.

- (b) second, the PDS would pass through the Quality Assurance Process steps as pleaded at paragraph 27 and 28 above; and

- (c) third, Legal and Compliance was to ensure that the PDS was circulated to the FIMS Board for review and comment, and then again (after any comments were addressed) for final approval by resolution.

Breach and Incident Policy

33. Since at least September 2016 to the end of the Relevant Period, the Breach and Incident Policy applied to FIMS, as amended from time-to-time.

Particulars

- A. Breach and Incident Policy, September 2016, cl 1.2.2;
Breach and Incident Policy, June 2019, cl 1.2.2;
Breach and Incident Policy, February 2021, cl 1.2.2;
Breach and Incident Policy, June 2022, cl 1.2.2.
34. The Breach and Incident Policy, as amended from time-to-time, relevantly required employees, to report any incident, breach, or event in Tickit (**Tickit Event**).

Particulars

- A. “Incident” is defined broadly, to be “a breakdown in a control, process or procedure. It may or may not result in an actual breach, or in a significant or materially adverse breach. For the purposes of this procedure the use of the term event or incident/s is deemed to include both incidents and breaches.”:
Breach and Incident Policy, September 2016, cl 1.3.1;
Breach and Incident Policy, June 2019, cl 1.3.1;
Breach and Incident Policy, February 2021, cl 1.3.1;
Breach and Incident Policy, June 2022, cl 1.3.1.
- B. Breach and Incident Policy, September 2016, cl 2.2.2;
Breach and Incident Policy, June 2019, cl 2.2.2;
Breach and Incident Policy, February 2021, cl 2.2.2;
Breach and Incident Policy, June 2022, cl 2.2.2.
35. From at least around September 2016, following the lodging of a Tickit Event, the following steps were to occur:
- (a) a notification of the Tickit Event was sent to the General Counsel, Chief Risk

Officer and Incident Review Team (IRT) where necessary;

Particulars

- A. Section 19 examination transcript of Ms Dass, T14.20-T15.14, T45:7-9;
 - B. Section 19 examination transcript Mr Gubecka, T48.20-49.4;
 - C. Breach and Incident Policy, September 2016, cl 2.2.2;
Breach and Incident Policy, June 2019, cl 2.2.2;
Breach and Incident Policy, June 2021, cl 2.2.2;
Breach and Incident Policy, June 2022, cl 2.2.2.
- (b) a member of the IRT (or a delegate) was to review the Tickit Event to identify the relevant business area;

Particulars

- A. Section 19 examination transcript of Ms Dass, T15:7-14.
 - B. Section 19 examination transcript Mr Gubecka, T48.20-49.4.
- (c) the Tickit Event was to be allocated to the head of the relevant business area;

Particulars

- A. Section 19 examination transcript Mr Gubecka, T49.6-11.
- (d) the Tickit Event was to be investigated by senior legal counsel and the head of the relevant business area;

Particulars

- A. Section 19 examination transcript Mr Gubecka, T49.8-14.
- (e) the senior legal counsel and General Counsel were to determine whether the Tickit Event comprised a breach that needed to be notified to ASIC, and if required, the breach was to be reported to ASIC;

Particulars

- A. Section 19 examination transcript of Ms Dass , T15:12-14.
- B. Section 19 examination transcript Mr Gubecka, T49.12-14.

- C. Breach and Incident Policy, September 2016, cl 3.1.1;
Breach and Incident Policy, June 2019, cl 3.1.1;
Breach and Incident Policy, June 2021, cl 3.1.1;
Breach and Incident Policy, June 2022, cl 3.1.1.

- (f) a reviewer was to review the Tickit Event to confirm that appropriate process had been followed before the Tickit Event was closed within Tickit;

Particulars

- A. Section 19 examination transcript Mr Gubecka, T49.18-21.

- (g) the head of the relevant business area was to close the Tickit Event;

Particulars

- A. Section 19 examination transcript Mr Gubecka, T49.16-17.

- (h) the FIMS ARCC received reports on the status of previously reported incidents and newly reported incidents;

Particulars

- A. Breach and Incident Policy, September 2016, cl 2.2.2(c);
Breach and Incident Policy, June 2019, cl 2.2.2(c);
Breach and Incident Policy, June 2021, cl 2.2.2(c);
Breach and Incident Policy, June 2022, cl 2.2.2(c).

- (i) the FIMS ARCC was to consider all incidents and breaches at the next meeting of the ARCC (following the lodging of a Tickit Event); and

Particulars

- A. Breach and Incident Policy, September 2016, cl 2.2.2(d);
Breach and Incident Policy, June 2019, cl 2.2.2(d);
Breach and Incident Policy, June 2021, cl 2.2.2(d);
Breach and Incident Policy, June 2022, cl 2.2.2(d).

- (j) the FIMS ARCC was to report to the FGL board or the relevant subsidiary if appropriate for resolution or otherwise.

Particulars

- A. Breach and Incident Policy, September 2016, cl 2.2.2(d);
Breach and Incident Policy, June 2019, cl 2.2.2(d);

Breach and Incident Policy, June 2021, cl 2.2.2(d);

Breach and Incident Policy, June 2022, cl 2.2.2(d).

Dispute Resolution Policy

36. From around May 2016 to the end of the Relevant Period, FGL had in place a documented Dispute Resolution Policy which was amended from time-to-time and which applied to the Fiducian Group, including FIMS.

Particulars

- A. Dispute Resolution Policy, May 2016;
 Dispute Resolution Policy, June 2019;
 Dispute Resolution Policy, February 2021;
 Dispute Resolution Policy, June 2022;
 Dispute Resolution Policy, February 2024.
37. The Dispute Resolution Policy required Fiducian Group staff (which includes employees of all wholly owned subsidiaries of FGL, including FIMS) or Fiducian Financial Planners, to register the receipt of any expression of dissatisfaction with a product or service offered or provided by the Fiducian Group in Tickit ("**Complaint**").

Particulars

- A. "Complaint" is defined in the Dispute Resolution Policy as including any expression of dissatisfaction with a product or service offered or provided by the Fiducian Group or the complaints handling process itself, in circumstances where a response or resolution is explicitly or implicitly expected by the client. The dissatisfaction can be verbal or written: Dispute Resolution Policy May 2016 – February 2021 (not including February 2021).
- B. From and including February 2021 onwards, "Complaint" is defined as any expression of dissatisfaction with:
- a. the Fiducian Group;
 - b. a product or service offered or provided by the Fiducian Group; or
 - c. Staff of the Fiducian Group; or

d. the complaints handling process itself,

in circumstances where a response or resolution is explicitly or implicitly expected or legally required to be provided to the client. This dissatisfaction can be provided verbally or in written form.

- C. Dispute Resolution Policy, May 2016, cl 1.4.1;
Dispute Resolution Policy, June 2019, cl 1.4.1;
Dispute Resolution Policy, February 2021, cl 1.4.1;
Dispute Resolution Policy, June 2022, cl 1.4.1;
Dispute Resolution Policy, February 2024, cl 1.3.1.

38. At all relevant times, Complaints:

- (a) could be made by a complainant by any reasonable means, including by telephone, letter, in person or email; and

Particulars

- A. From February 2021 onwards social media channels, and from February 2024 onwards other online channels, were also available channels through which to make complaints – see Dispute Resolution Policy, May 2016, cl 2.1.1;
Dispute Resolution Policy, June 2019, cl 2.1.1;
Dispute Resolution Policy, February 2021, cl 2.1.1;
Dispute Resolution Policy, June 2022, cl 2.1.1;
Dispute Resolution Policy, February 2024, cl 2.1.1.

- (b) could be received directly from the complainant or investor, or through the complainant's Fiducian Financial Planner.

Particulars

- A. From February 2021 onwards complaints could also be received from an outsource service providers and from February 2024 onwards, from the complainant's representative (which might include financial counsellors, legal representatives, family, friends or members of parliament). If the complaint was received from a representative, Fiducian was required to seek the

complainant's express consent to liaise with the representative – see Dispute Resolution Policy, May 2016, cl 2.1.2;

Dispute Resolution Policy, June 2019, cl 2.1.2;

Dispute Resolution Policy, February 2021, cl 2.1.2;

Dispute Resolution Policy, June 2022, cl 2.1.2;

Dispute Resolution Policy, February 2024, cl 2.1.2.

39. The Dispute Resolution Policy specified, relevantly:

- (a) the timeline, action and responsibilities for responding to Complaints;
- (b) the responsibilities of the “Complaints Manager”, including to:
 - (i) identify the investigation necessary, which may include the following:
 - (A) no further action required;
 - (B) further discussion with the client required;
 - (C) referral to the Executive Chair of the relevant subsidiary company or any member of the IRT; or
 - (D) any other action necessary to resolve the Complaint;
 - (ii) identify system breaches by monitoring the complaints register on a regular basis.

Particulars

- A. Dispute Resolution Policy, May 2016, cll 2.2.7 - 2.2.8;
Dispute Resolution Policy, June 2019, cll 2.2.7 - 2.2.8;
Dispute Resolution Policy, February 2021, cll 2.2.9 - 2.2.10;
Dispute Resolution Policy, June 2022, cll 2.2.9 - 2.2.10;
Dispute Resolution Policy, February 2024, cll 2.2.8 - 2.2.9.

40. Since 20 October 2015, the Compliance Manager of FIMS has been Mr Gubecka.

Particulars

- A. FIMS letter to ASIC dated 11 September 2025 in response to s 912C Notice dated 4 September 2025.

41. During the Relevant Period, a number of Complaints that were made, which related to, or were in respect of, the DSAF, were not registered in Tickit, or addressed in accordance with the Dispute Resolution Policy.

Particulars

- A. Section 19 examination transcript of Mr Gubecka, T119-122.
- B. Section 19 examination transcript of Ms Dass T26:1-4.
- C. ASIC refers to and repeats the “Investor Concerns” pleaded at paragraphs 106 to 110 below.

B.7. Roles and responsibilities

42. At all times during the Relevant Period:

- (a) the FIMS ARCC was, relevantly:

- (i) appointed as the Compliance Committee for the Fiducian Funds, including the DSAF;
- (ii) required to report any known or suspected breaches of the Corporations Act or the Fiducian Funds’ Constitutions to FIMS (and ASIC, in circumstances required by the Corporations Act); and
- (iii) required to appoint the Compliance Manager and any Compliance Officer;

- (b) the **Administrator** was, relevantly:

- (i) Fiducian Services Pty Ltd;
- (ii) required to provide regular compliance reports to FIMS via the Fiducian Group ARCC; and
- (iii) required to investigate and resolve any issues with the Fiducian Group ARCC;

- (c) the **Chief Risk Officer** of FIMS was, relevantly:

- (i) required to record any breaches or potential breaches, being an incident or act that resulted in the breaking or failing to observe a law, agreement, or code of conduct, and was required to report any breach or potential breach in accordance with the Incident and Breach Reporting Policy;

- (ii) a member of the IRT for the purposes of the RMF and Compliance Plan and as part of that team was required to evaluate the nature of, and recommend rectification of all recorded incidents that may have a compliance, risk or performance bearing on FIMS pursuant to the Breach and Incident Policy;
- (iii) responsible, with the Head of Technology, for administering the Tickit system;
- (iv) responsible for reporting on risk management matters to the FIMS Board and FIMS ARCC on a regular basis (**Risk Reports**);
- (v) required to conduct face-to-face risk workshops with each “Risk Owner” on a quarterly basis, the purpose of which was to discuss risk related matters including any emerging risks not on the risk register;
- (vi) required to report to the FIMS ARCC any emerging risks that arise from breaches reported in the breach register;
- (vii) required to conduct Quality Control Assurance on a quarterly basis pursuant to the Quality Control Assurance Program;
- (viii) a member of the Management Team for the purposes of the Compliance Plan, with responsibility for promoting and supporting FIMS’s positive compliance culture; and
- (ix) in the capacity of a Compliance Executive under the Compliance Plan was required to discharge the compliance related requirements of the Chief Risk Officer with respect to the risk management operational unit of the Fiducian Group, including completing the “Compliance Obligations” allocated to the Chief Risk Officer in Tickit; reporting to the Compliance Manager any compliance issues; and attesting to whether or not each individual requirement was satisfied for the relevant period.

Particulars

A. Section 19 examination transcript of Ms Dass, T22:08-20.

- (d) the **General Counsel** of FIMS was, relevantly:
 - (i) from on or around 20 October 2015, Mr Gubecka;
 - (ii) a “Responsible Person”, “Risk Owner” and member of the “Management

Team” for the purposes of the RMF, and:

- (A) was required to attend face-to-face risk workshops with the Chief Risk Officer on a quarterly basis, the purpose of which was to discuss risk related matters for the legal and compliance function, including any emerging risks not on the risk register;
 - (B) was required on a quarterly basis, to sign off on the effectiveness of the risk controls for legal and compliance risks using Tickit;
 - (C) was required to report and record any breaches or potential breaches and report them in accordance with the Breach and Incident Policy;
 - (D) was responsible for the oversight and management of the breach register and for ensuring breach notifications are provided to the regulators for the Registrable Superannuation Entity (**RSE**) and AFS licensees.
- (iii) responsible for reporting on compliance matters, legislative updates and any breaches to the FIMS Board and FIMS ARCC on a regular basis (**Compliance Reports**);
- (iv) a Compliance Executive for the legal and compliance operational unit for the purpose of the Compliance Plan and required to discharge the compliance related requirements of the legal and compliance operational unit of the Fiducian Group;
- (v) the Compliance Manager for the purpose of the Compliance Plan and in this capacity was responsible for:
- (A) assisting the FIMS ARCC to undertake its activities pursuant to the Compliance Plan;
 - (B) escalating any compliance breach of the Compliance Plan consistently with the Incident and Breach Reporting Policy;
 - (C) assigning compliance obligations within Tickit for completion by the Compliance Executives as at nominated dates (**Compliance Obligations**);
 - (D) ensuring that the Compliance Executives were completing their

“Compliance Obligations” listed in Tickit;

- (E) conducting a quarterly review of Tickit responses, together with the Fiducian Group ARCC and the FIMS Board; and
 - (F) at least quarterly, providing formal “Compliance Reports” to the Fiducian Group ARCC on compliance issues or events and their resolution status;
- (vi) a member of the IRT for the purposes of the RMF and Compliance Plan and as part of that team required to evaluate the nature of, and recommend rectification of all recorded incidents that may have a compliance, risk or performance bearing on FIMS pursuant to the Breach and Incident Policy.
- (e) **Compliance Executives** of FIMS were the heads of relevant businesses, and:
- (i) were responsible for ensuring their Business (or Operational Unit) had implemented regulatory and risk related procedures to ensure compliance with their obligations under the Compliance Plan and relevant laws;
 - (ii) were responsible for reporting to the Compliance Manager in respect of compliance matters and the Compliance Plan
 - (iii) were responsible for within 1 business day, reporting to the Compliance Manager any compliance issues identified and report progress of resolution until completed;
 - (iv) were responsible for immediately reporting details to the Compliance Manager of anything they were aware of, or suspected may result in a breach of a legal requirement or a current disclosure document becoming defective or misleading or deceptive;
 - (v) were responsible for completing Compliance Obligations in Tickit and providing other information as required to enable the Compliance Manager to report to the FIMS ARCC (or the Compliance Committee); and
 - (vi) Mr Burge, as Head of Investments, was a Compliance Executive.

C. DIVERSIFIED SOCIAL ASPIRATIONS FUND (DSAF)

C.1. Material facts

Creation of the DSAF

43. On or about 24 September 2014, the Investment Team recommended to the Investment Committee that FIMS create a new Fiducian Fund which fit into the category of “ethical” or “socially responsible” investments (**Recommendation**).

Particulars

- A. Minutes of Investment Committee, 24 September 2014.
 - B. Investment Team Submission, 25 September 2014.
44. The Investment Team made the Recommendation following:
- (a) repeated requests from Fiducian Financial Planners that FIMS offer a fund that has ethical, “Socially Responsible Investment” (**SRI**) or “Environmental, Social and Governance” (**ESG**) objectives (the **Ethical Investment Objectives**);
 - (b) concerns raised by Fiducian Financial Planners that clients would be lost if a Fiducian Fund was not offered to address Ethical Investment Objectives; and
 - (c) to meet demand from clients as identified by Fiducian Financial Planners.

Particulars

- A. Investment Team Submission to Investment Committee, 25 September 2014.
45. The Recommendation proposed that the DSAF:
- (a) utilise the Manage-the-Manager System; and
 - (b) make investment in two Underlying Funds, being:
 - (i) a discrete wholesale Australian ESG Shares Mandate operated by Solaris Investment Management Limited (**Solaris**), which was exposed to Australian shares (**Solaris Mandate**); and
 - (ii) the Candriam Sustainable Global Equity Fund operated by Ausbil Investment Management Limited (**Ausbil**) which was exposed to international shares (**Candriam Fund**).

Particulars

- A. Investment Team Submission to Investment Committee, 25 September 2014.

46. In the Recommendation, the Investment Team observed that:
- (a) one of the benefits for investors in investing in a fund with Ethical Investment Objectives was “emotional”;
 - (b) the proposed DSAF should not be assessed only by reference to financial or investment returns; and
 - (c) the proposed DSAF may not out-perform:
 - (i) non-ESG or non-SRI index funds or investments; or
 - (ii) other funds or investments without Ethical Investment Objectives.

Particulars

- A. Investment Team Submissions to Investment Committee,
25 September 2014.

47. On 30 September 2014, the Investment Committee adopted the proposal to add the DSAF to the FIMS Fiducian Funds stable and recommended the proposal to the FIMS Board.

Particulars

- A. Investment Committee Recommendation to FIMS Board,
30 September 2014.

48. On 22 October 2014, the FIMS Board resolved to accept the recommendation of the Investment Committee and to create the DSAF as a Fiducian Fund.

Particulars

- A. FIMS Board Minutes, 22 October 2014.

49. On 20 August 2015, the Compliance Plan for the DSAF was executed.

Particulars

- A. Compliance Plan, 20 August 2015.

50. On 20 August 2015, the FIMS Board formally approved the Compliance Plan and Constitution for the DSAF.

Particulars

- A. FIMS Board Minutes, 20 August 2015.

51. On 20 August 2015, the DSAF Constitution was established by Trust Deed.

Particulars

A. DSAF Constitution, 20 August 2015.

52. The DSAF Constitution described the investment strategy of the DSAF as being set out in the PDS for the DSAF (**DSAF PDS**).

Particulars

A. ASIC refers to and repeats the ESG Statements in the DSAF PDS's as set out in paragraph 98 below.

B. DSAF Constitution, 20 August 2015, cl 3.1.

53. On 8 September 2015, the DSAF was registered with ASIC.
54. On or about 16 September 2015, the first PDS for the DSAF was published.

Particulars

A. DSAF PDS, 16 September 2015.

55. On or about 2 November 2015, the DSAF opened to new investments.

Particulars

A. Investment Management Report, 29 January 2015.

56. In relation to the creation of the DSAF:
- (a) Mr Singh reviewed, or alternatively discussed the Recommendation made by the Investment Team to the Investment Committee on 24 September 2014 with Conrad Burge before it was submitted;
 - (b) Mr Singh was present at the Investment Committee meeting on 30 September 2014 at which the Investment Committee resolved to recommend the DSAF to the FIMS Board; and
 - (c) Mr Singh was present at the FIMS Board meeting on 22 October 2014 at which the FIMS Board resolved to accept the recommendation of the Investment Committee to create the DSAF Fund.

Amendment to the DSAF

57. On 1 October 2021, the Investment Team recommended to the Investment Committee that the Solaris Mandate be replaced as an Underlying Fund of the DSAF with the Perpetual Wholesale Ethical SRI Fund, which from around 1 October 2022 was renamed

the Perpetual ESG Australian Share Fund (**Perpetual Fund**), managed by Perpetual Investment Management Limited (**Perpetual**) (**Amendment Recommendation**).

58. The Investment Team made the Amendment Recommendation for the following stated reasons:

- (a) low uptake by investors of the DSAF since its inception; and
- (b) a belief that the low uptake of the DSAF by investors was a result of the underperformance of the Solaris Mandate.

Particulars

- A. Investment Team Submission to Investment Committee, October 2021.

59. On 28 October 2021, the Investment Committee resolved to recommend to the FIMS Board that the Perpetual Fund replace the Solaris Mandate as the Underlying Fund of the DSAF exposed to Australian equities.

Particulars

- A. Investment Committee Minutes, 28 October 2021.

60. On 16 November 2021, the FIMS Board resolved to replace the Solaris Mandate with the Perpetual Fund.

Particulars

- A. FIMS Board Minutes, 16 November 2021.

61. The Perpetual Fund became an Underlying Fund, available to investors as part of the DSAF, from in or around February 2022.

Particulars

- A. Letter from FIMS to ASIC dated 5 April 2024 in response to notice issued pursuant to s 912E of the Corporations Act.

62. In relation to the amendment to the DSAF:

- (a) Mr Burge and Mr Singh were involved in reviewing and/or drafting the Amendment Recommendation made by the Investment Team to the Investment Committee on 1 October 2021;
- (b) Mr Burge and Mr Singh were present at the Investment Committee meeting on

28 October 2021 at which the Investment Committee resolved to recommend to the FIMS Board that the Solaris Mandate be replaced with the Perpetual Fund; and

- (c) Mr Burge and Mr Singh were present at the FIMS Board meeting on 16 November 2021 at which the FIMS Board resolved to replace the Solaris Mandate with the Perpetual Fund.

Closure of the DSAF

- 63. In April 2024, the Investment Team recommended to the Investment Committee that the DSAF be closed (**Closure Recommendation**).
- 64. The Investment Team made the Closure Recommendation for the following stated reasons:
 - (a) that take-up of investment in the DSAF had been meagre; and
 - (b) the DSAF was not a genuine economic proposition for FIMS.

Particulars

- A. Investment Team Submission to Investment Committee, April 2024.

- 65. On 10 April 2024, the Investment Committee agreed to recommend to the FIMS Board that the DSAF be closed.

Particulars

- A. Investment Committee Minutes, 10 April 2024.

- 66. On 11 April 2024, the FIMS Board resolved to close the DSAF.

Particulars

- A. FIMS Board Minutes, 11 April 2024.

- 67. On 31 May 2024, FIMS notified ASIC that the DSAF ceased to be available as of 30 May 2024.

Particulars

- A. Form FS90 lodged by FIMS with ASIC, 31 May 2024.

- 68. In relation to the closing of the DSAF:

- (a) Mr Singh and Mr Burge were involved in drafting the Recommendation made

by the Investment Team to the Investment Committee in April 2024;

- (b) Mr Singh and Mr Burge were present at the Investment Committee meeting on 10 April 2024 at which the Investment Committee resolved to recommend to the FIMS Board that the DSAF be closed; and
- (c) Mr Singh and Mr Burge were present at the FIMS Board meeting on 11 April 2024 at which the FIMS Board resolved to close the DSAF.

Size and profit of the DSAF

- 69. As at the end of June 2016, over \$3 million in funds had been invested in the DSAF.
- 70. By 31 August 2021, approximately \$12 million in total funds had been invested in the DSAF.
- 71. By April 2024:
 - (a) over 120 investors were invested in the DSAF; and
 - (b) over \$14.5 million in funds under management were invested in the DSAF.
- 72. For the financial year ending 30 June 2024, FIMS recorded a return on investment in respect of the DSAF in the amount of \$1,354,230.
- 73. For the period dating 1 July 2015 to 30 June 2024, FIMS recorded a return on investment in respect of the DSAF in the amount of \$6,580,733.

C.2. The Underlying Funds of the DSAF

Candriam Fund

- 74. During the Relevant Period, the Candriam Fund invested in listed global equities selected from the MSCI World Index.
- 75. Between around 2015 and in or around September 2022, the Candriam Fund:
 - (a) excluded the following shares or companies entirely:
 - (A) companies involved in the production or sale of anti-personnel landmines, cluster bombs, depleted uranium and/or chemical/nuclear/biological weapons; and
 - (B) companies that generate more than 3% of their turnover from the production of the sale of conventional weapons.
 - (b) imposed materiality limits on investments in certain categories of shares or

companies, as follows:

- (A) alcohol, company revenue must not exceed 10% without a responsible policy;
- (B) tobacco, 5% revenue limit;
- (C) nuclear power, 30% revenue limit;
- (D) gambling, 10% revenue limit;
- (E) adult content, 5% revenue limit; and
- (F) activities in oppressive regimes, 1% revenue limit,

(Candriam Investment Screens).

76. Relevantly:

- (a) on or around 30 September 2022, Ausbil introduced a “Controversial Activity Exclusion Policy” (**2022 CAEP**) for the Candriam Fund, which amended the Candriam Investment Screens;
- (b) on or around 30 September 2023, the 2022 CAEP was amended (**2023 CAEP**); and
- (c) on or around 16 February 2024, the 2023 CAEP was amended (**2024 CAEP**).
(together, the **CAEPs**).

77. Relevantly, between in or around 30 September 2022 and 30 May 2024, when the DSAF closed, the CAEPs provided that the Candriam Fund:

- (a) excluded shares or companies involved in the production of controversial weapons, such as nuclear weapons, anti-personnel landmines, cluster bombs, depleted uranium, chemical weapons, biological weapons, white phosphorous weapons; and
- (b) imposed materiality limits on investments in certain categories of shares or companies, as follows:
 - (A) adult content media, 5% revenue limit;
 - (B) alcohol, 10% revenue limit
 - (C) genetic modifications, 10% revenue limit without the presence of an applicable responsible policy;

- (D) nuclear power, 30% revenue limit for developed markets and 5% revenue limit for emerging markets;
 - (E) animal testing, exclude all companies without a responsible policy and no legal requirement to test; and
 - (F) activities exercised in oppressive regimes.
78. At no stage during the Contravention Period did the Candriam Investment Screens, as amended from time to time, completely exclude investments in shares or companies that derived revenue wholly or substantially from fossil fuels or that derived revenue from the categories identified in paragraphs 75 to 77(b) above.

Particulars

- A. For example, during the Contravention Period, the Candriam Fund's holdings included BHP Group PLC, Woodside Petroleum and Royal Dutch Shell A.
79. During the Contravention Period, Ausbil provided to FIMS:
- (a) Monthly Performance Updates for the Candriam Fund;
 - (b) Quarterly Performance Updates for the Candriam Fund; and
 - (c) a monthly report comprising a list of the securities or shareholdings held by the Candriam Fund.
80. The Monthly Performance Updates and Quarterly Performance Updates were:
- (a) approximately 2 pages long;
 - (b) contained a list of:
 - (A) 10 ten securities or shareholdings of the Candriam Fund;
 - (B) identified the key share "contributors and detractors"; and
 - (c) did not contain a list of all of the underlying securities or shareholdings of the Candriam Fund.

Particulars

- A. For example: Candriam Sustainable Global Equity Fund Monthly Performance Update, May 2020; Candriam Sustainable Global Equity Fund Quarterly Performance

Update, June 2020.

Solaris Mandate

81. On 1 August 2015, FIMS and Solaris executed an Investment Management Agreement (IMA), which:

- (a) defined “ESG” to mean “environmental, social and governance, central factors in measuring the sustainability and ethical impact of an investment in a company or business”;
- (b) required Solaris to comply with the “Investment Instructions” in Part A of Schedule 2 of the IMA, which:
 - (A) required Solaris to invest in Australian Shares and Australian Cash investments taking specific ESG factors into account as set out in Part B of Schedule 2 of the IMA;

Particulars

- A. IMA, cl 3.2(a).
- B. IMA, schedule 2, Part A, cl 1.3.
- (c) set out “Investment Objectives” in Part B of Schedule 2 of the IMA, which:
 - (A) provided that Solaris was to exclude all shares that derive greater than 10% of revenues from the following activities:
 - 1. alcohol production or sales;
 - 2. armaments production or sales;
 - 3. coal fired power generation;
 - 4. gambling;
 - 5. pornography production or sales;
 - 6. thermal coal mining or sales;
 - 7. tobacco production or sales; and
 - 8. uranium mining or sales.

(Solaris Investment Screens)

Particulars

A. IMA, Schedule 2, Part B, cl 2.3.

- (d) expressly provided that the “Investment Objectives” in Part B of Schedule 2 of the IMA were guidelines and not legally binding on Solaris.

Particulars

A. IMA, cl 3.3.

82. The Solaris Mandate was a bespoke fund arranged by contract, being the IMA, between Solaris, as Manager, and FIMS for the purpose of the DSAF.

Particulars

A. IMA, cl 2.1, Schedule 1, par 1.

83. During the Contravention Period, FIMS received from Solaris:

- (a) ESG Quarterly Reports, which:
- (i) were sent to the Investment Team;
 - (ii) were not specific to the DSAF; and
 - (iii) provided information about general ESG themes observed by Solaris.

Particular

A. For example, Solaris ESG Quarterly Investment Report, 30 September 2020.

- (b) Fiducian DSAF Monthly Investment Reports, which:
- (i) were approximately 10 to 11 pages long;
 - (ii) identified:
 - (A) the top 10 securities or shareholdings;
 - (B) the top five share contributors to performance;
 - (C) the bottom five share contributors to performance;
 - (D) the top five active share positions;
 - (E) the bottom five active share positions; and
 - (F) the sector allocation; and
 - (iii) contained a complete list of the securities or shareholdings held by the

mandate.

Particulars

A. Example Solaris DSAF Monthly Investment Report, 31 January 2021.

(c) Fiducian DSAF Quarterly Investment Reports, which:

(i) were approximately 15 pages long;

(ii) identified:

(A) top 10 securities or shareholdings;

(B) top five active share positions;

(C) bottom five active share positions;

(D) sector allocation; and

(iii) contained a complete list of the securities or shareholdings or securities held by the mandate.

Particulars

A. Example Solaris DSAF Quarterly Investment Report, 31 December 2021.

84. At no stage during the Contravention Period when the Solaris Mandate was an Underlying Fund of the DSAF, being between 3 October 2019 and in or around February 2022, did the Solaris Investment Screens completely exclude investments in shares or companies that derived revenue wholly or substantially from fossil fuels or that derived revenue from the categories identified in paragraph 81(c) above.

Particulars

A. For example, during the Contravention Period, the Solaris Mandate's holdings included Santos Ltd, BHP Group Ltd, and Woodside Petroleum Ltd.

Perpetual Fund

85. In or around February 2022, the Perpetual Fund became an Underlying Fund for the DSAF in place of the Solaris Mandate.

Particulars

A. ASIC refers to and repeats paragraph 61 above.

86. Perpetual issued three PDS's for the Perpetual Fund during the period that the Perpetual Fund was an Underlying Fund of the DSAF.

Particulars

- A. Perpetual Investment Funds PDS Issue Number 14, dated 1 June 2021 (**2021 Perpetual PDS**);
 Perpetual Investment Funds PDS Issue Number 15, dated 1 October 2022 (**2022 Perpetual PDS**);
 Perpetual Investment Funds PDS Issue Number 16, dated 1 November 2023 (**2023 Perpetual PDS**).

87. The 2021 Perpetual PDS:

- (a) excluded companies involved in the production of tobacco, tobacco-based products and the development and production of controversial weapons; and
- (b) excluded companies or issuers that derived a material proportion of their revenue, being 5% or more, from:
 - (A) the manufacture or sale of alcohol or tobacco;
 - (B) the operation of gambling facilities or the manufacture or supply of gambling products;
 - (C) fossil fuels (upstream);
 - (D) uranium and nuclear;
 - (E) animal cruelty (cosmetic testing);
 - (F) genetic engineering;
 - (G) pornography; and
 - (H) armaments (including weapons).

(Perpetual Investment Screens)

88. The remaining shares, after the Perpetual Investment Screens were applied pursuant to the 2021 PDS, were also subject to an SRI Screening, a qualitative assessment which assessed companies according to a combination of environmental, social and governance factors (**Perpetual Qualitative SRI Screen**).

Particulars

A. 2021 Perpetual PDS.

89. The 2022 Perpetual PDS amended the Perpetual Investment Screens to exclude investment in companies involved in the manufacture of nicotine alternatives.
90. The 2023 Perpetual PDS:
 - (a) amended the Perpetual Investment Screens, to:
 - (A) exclude companies that derived revenue from tobacco (production);
 - (B) exclude companies that derived revenue from weapons (nuclear);
 - (C) exclude companies that derived revenue from weapons (Military Controversial); and
 - (D) exclude companies or issuers that derived a material proportion of their revenue, being 5% or more from “tobacco retailing”; and
 - (b) amended the factors incorporated into the Perpetual Qualitative SRI Screen.

Particulars

A. The Perpetual Qualitative SRI Screen was renamed to the ‘ESG Exclusionary Screen’ in the 2023 Perpetual PDS and amended to include a list of 15 environmental, social and governance factors.

91. At no stage during the Contravention Period when the Perpetual Fund was an Underlying Fund of the DSAF, being between February 2022 and 30 May 2024, did the Perpetual Investment Screens, as amended from time-to-time, completely exclude investments in shares or companies that derived revenue wholly or substantially from fossil fuels or that derived revenue from the categories identified in paragraph 87(b), 89 and 90 above.
92. During the Relevant Period, FIMS received from Perpetual:
 - (a) a Monthly Report; and
 - (b) a Quarterly report.
93. Both the Monthly Reports and Quarterly Reports were:
 - (a) approximately 2 pages long;

- (b) contained:
 - (A) a list of the top 10 holdings of the Perpetual Fund;
 - (B) sectoral analysis; and
 - (C) portfolio commentary; and
- (c) did not contain a full list of the underlying shares holdings of the Perpetual Fund.

Particulars

- A. For example, Perpetual Wholesale Ethical SRI Fund
Monthly Report, January 2021;
For example, Perpetual Wholesale Ethical SRI Fund
Quarterly Report, May 2021.

C.3. The DSAF PDS

- 94. The first version of the DSAF PDS was drafted by Mr Singh in or around 2014 and 2015.

Particulars

- A. Section 19 examination transcript of Mr Singh, 4 April 2025,
T63.20–22.
- B. DSAF PDS, 16 September 2015.

- 95. The DSAF PDS was issued 11 times during the Relevant Period.

Particulars

- A. 16 September 2015;
1 December 2015;
30 September 2017;
2 July 2018;
3 December 2018;
1 August 2019;
1 September 2020;
1 July 2021;
30 June 2022;
30 June 2023;
1 February 2024.

96. Each version of the DSAF PDS was issued with approval from the FIMS Board.
97. Each version of the DSAF PDS was:
- (a) published on the Fiducian Group website between 1 December 2015 and 1 February 2024; and
 - (b) accessed or downloaded from the Fiducian Group website between 1 December 2015 and 1 February 2024.

Particulars

- A. Letter from FIMS to ASIC dated 23 May 2025 in response to notice issued pursuant to s 912C(1) of the Corporations Act.
- B. Fiducian Group website being: www.fiducian.com.au/

98. Each version of the PDS contained the following statements (together, **ESG Statements**):

- (a) “Share portfolios comprise investments in companies that aim to be positive for society and for the environment and aim to avoid investments in harmful activities” (**ESG Statement 1**); and
- (b) “Managers are not expected to sacrifice ethics for returns, but they shall strive to achieve competitive returns. Some of the companies to be avoided are those that:
 - (i) Pollute air, land and water unnecessarily;
 - (ii) Extract or create goods or services harmful to humans and animals;
 - (iii) Deceive or mislead in their promotional activities;
 - (iv) Encourage military activity or armaments;
 - (v) Exploit people through low wages or poor working conditions;
 - (vi) Discriminate on the basis of race, religion or sex; or
 - (vii) Impede human rights” (**ESG Statement 2**).

99. Each version of the PDS contained the following statements (together, **Systems and Processes Statements**):

- (a) that “portfolio exposure, operations and performance of all of our fund managers

are routinely monitored” (**Systems and Processes Statement 1**); and

- (b) that “Fiducian constantly monitors the Fund’s underlying investment managers to ensure that they maintain their investment styles and processes” (**Systems and Processes Statement 2**).

- 100. At no time during the Relevant Period did FIMS cause any of the ESG Statements or Systems and Processes Statements to be withdrawn or amended.
- 101. At no time during the Relevant Period did any version of the DSAF PDS contain any statement which:
 - (a) referred to or set out the investment screens of the relevant Underlying Funds as described at paragraphs 75-77, 81, and 87-90 above;

Particulars

- A. The Candriam Investment Screens as amended from time to time; the Solaris Investment Screens; or the Perpetual Investment Screens as amended from time to time.
- (b) provided the reader of the PDS with sufficient information to understand the ESG characteristics of the Underlying Funds of the DSAF.

C.4. External Communications

- 102. On or from 2 November 2015, when the DSAF opened to investors, through to the end of the Relevant Period, Fiducian Financial Planners offered the DSAF as an investment option to investors.
- 103. The DSAF was offered to clients or investors by way of at least the following External Communications:
 - (a) a presentation dated in or around May 2023 (**May 2023 Presentation**), which:
 - (i) included a section titled “ESG and Greenwashing Are you getting what you expected?”;
 - (ii) included a slide (slide 34) that compared the sales pitch of a non-Fiducian Fund with that fund’s list of top 10 holdings and posed the question “Are you getting what you expected?”;
 - (iii) included a slide (slide 35) that was titled “Fiducian Diversified Social Aspirations Fund”, and which contained the statement “Zero exposure to

fossil fuels and other controversial industries”; and

- (iv) was provided to at least five clients.

Particulars

- A. The May 2023 Presentation was shared with clients via emails from Fiducian Financial Planners, see: email correspondence dated:
30 May 2023;
1 June 2023;
6 June 2023.

- (b) a “supporting information” document, which:
 - (i) was prepared by a Fiducian Financial Planner; and
 - (ii) contained statements emphasizing the Ethical Investment Objectives of the DSAF;

Particulars

- A. Supporting Information document, August 2019.
- (c) DSAF Research Notes, which were:
 - (i) created or prepared by FIMS;
 - (ii) issued monthly at all times from around November 2015 until the end of the Relevant Period;
 - (iii) made available to Fiducian Financial Planners;
 - (iv) provided by Fiducian Financial Planners to investors or potential investors; and
 - (v) not updated to reflect the removal of the Solaris Mandate and the inclusion of the Perpetual Fund from February 2022 until the end of the Relevant Period.

Particulars

For example, Fiducian Diversified Social Aspirations Funds Investment Management Styles Research Notes, March 2022; Fiducian Diversified Social Aspirations Funds Investment Management Styles Research Notes, May 2022;

Fiducian Diversified Social Aspirations Funds Investment Management Styles Research Notes, December 2023;
Fiducian Diversified Social Aspirations Funds Investment Management Styles Research Notes, January 2024.

C.5. Investor Concerns

104. From June 2020 to the end of the Relevant Period, investors in the DSAF and other Fiducian Funds were provided access to view the underlying securities or shareholdings of a mandate that was an Underlying Fund of a Fiducian Fund, by way of a “Drill Down Function” accessible via the Fiducian Group Website.
105. In the premises, investors in the DSAF, via the Drill Down Function:
 - (a) could from around June 2020 to around February 2022 view the underlying securities or shareholdings held by the Solaris Mandate, an Underlying Fund of the DSAF;
 - (b) could not view the underlying securities or shareholdings held by the Perpetual Fund or Candriam Fund, the other Underlying Funds of the DSAF from time-to-time.

Particulars

- A. FIMS letter dated 11 September 2025 in response to s 19(2)(a) Notice dated 5 September 2025.
 - B. Section 19 examination transcript of Mr Gubecka, 25 June 2025, T130.
106. From at least 19 May 2019 to the end of the Relevant Period, FIMS was put on notice of concerns relating to the misalignment of the shareholdings or investments of the Underlying Funds of the DSAF with the Ethical Investment Objectives of the DSAF (**Investor Concerns**).
 107. FIMS was notified of the Complaints or Investor Concerns:
 - (a) by its Fiducian Financial Planners; and

Particulars

The Investor Concerns were contained in at least the following:

- A. Email from Fiducian Financial Planner dated 17 May 2019.

- B. Email from Fiducian Financial Planner dated 27 February 2020.
- C. Concerns raised at Planners Council Meeting dated 29 June 2020.
- D. Email from Fiducian Financial Planner dated 13 August 2020.
- E. Email from Fiducian Financial Planner dated 24 August 2020.
- F. Email from Fiducian Financial Planner dated 18 January 2021.
- G. Email from Fiducian Financial Planner dated 5 February 2021.
- H. Email from Fiducian Financial Planner dated 16 August 2021.

(b) directly from investors.

Particulars

The Investor Concerns were contained in at least the following:

- A. Online Feedback dated 15 January 2021 from Fiducian Investor.

108. The Investor Concerns related to the DSAF's shareholdings or investments (including indirectly) in various companies, including:

- (a) BHP Billiton Limited;
- (b) Rio Tinto Limited;
- (c) Woodside Petroleum Limited;
- (d) Newcrest Mining Limited; and
- (e) Orica Limited.

109. Some or all of the Investor Concerns are Complaints as defined in the Dispute Resolution Policy.

Particulars

A. ASIC refers to and repeats paragraph 37 above.

110. None of the Investor Concerns raised with FIMS since 19 May 2019, as pleaded in paragraph 107 above, were:

- (a) registered as a Ticket Event in Tickit;

Particulars

A. ASIC refers to and repeats paragraph 34 above.

- (b) dealt with or addressed in accordance with the Dispute Resolution Policy;

Particulars

A. ASIC refers to and repeats paragraphs 36 to 37 and 39 above.

- (c) dealt with or addressed in accordance with the Breach and Incident Policy; or

Particulars

A. ASIC refers to and repeats paragraphs 33 and 35 above.

- (d) considered or otherwise assessed to identify the existence of any systemic issues.

Proposal to amend the DSAF to align with investor expectations

111. On 5 October 2021, a member of the Investment Team sent an email to Mr Singh, Mr Burge and another member of the FIMS Board, which:

- (a) proposed that the DSAF exclude investments in fossil fuels;
- (b) observed that:
 - (i) the three top issues for ESG conscious investors were fossil fuels, human rights and animal cruelty and that none of these sectors were excluded from the DSAF;
 - (ii) the Solaris Mandate and Candriam Fund appear to be light on in respect of reporting on ESG engagement issues when compared to other funds in the market; and
 - (iii) a number of Fiducian Financial Planners had informed him that they did not see the DSAF as a viable option due to its poor performance and a holding/exclusions policy that did not align with client values; and
- (c) suggested that for the DSAF to align with client values:

- (i) the Candriam Fund needed to be replaced, given their ‘best of sector approach’ did not exclude fossil fuels; and
- (ii) the Solaris Mandate needed to be modified, or alternatively, a new manager be appointed.

(the **DSAF Amendment Proposal**).

Particulars

- A. Email dated 5 October 2021, attaching the DSAF Amendment Proposal.
- B. Email from Mr Burge dated 6 October 2021.

D. CONTRAVENTIONS

D.1. ESG Statements Misrepresentations Case

112. At all times, for the purposes of Division 2 of Part 2 of the ASIC Act, the operation of the DSAF, a managed investment scheme, was a “financial service” within the meaning of s 12BAB(1) of the ASIC Act.

Particulars

- A. ASIC Act, s 12BAB(1)(d).
113. During the Contravention Period, FIMS published five versions of the DSAF PDS, each of which contained the ESG Statements pleaded in paragraph 98 above, but which made no reference to the matters pleaded in paragraph 101 above.
114. By making the ESG Statements during the Contravention Period, and by failing to withdraw or qualify those statements, FIMS represented that:
- (a) the DSAF would only make investments (including through any Underlying Funds) in companies that were considered to be positive for society and the environment;
 - (b) the DSAF would avoid making investments (including through any Underlying Funds) in companies that were considered to have activities that were harmful for society or the environment; and
 - (c) the DSAF would avoid making investments (including through any Underlying Funds) in companies that:
 - (i) polluted the air, land or water unnecessarily;

- (ii) extracted or created goods or services harmful to humans and animals;
- (iii) deceived or mislead in their promotional activities;
- (iv) encouraged military activity or armaments;
- (v) exploited people through low wages or poor working conditions;
- (vi) discriminated on the basis of race, religion or sex; or
- (vii) impeded human rights

(each an **ESG Statement Representation**).

- 115. Each of the ESG Statement Representations made during the Contravention Period was a continuing representation until the end of the Contravention Period.
- 116. Each of the ESG Statement Representations was a representation with respect to a future matter within the meaning of s 12BB of the ASIC Act.
- 117. At the time of making each of the ESG Statement Representations during the Contravention Period, and at each time until the end of the Contravention Period, FIMS did not have reasonable grounds for the ESG Statement Representations by reason of the following matters (insofar as each matter existed at the time the relevant representation was made):
 - (a) ASIC relies on paragraph 12BB of the ASIC Act;
 - (b) the matters pleaded at paragraphs 75, 77(b), 78, 81(c) and (d), 87(b), 90, and/or 91 above;
 - (c) the DSAF PDS's were not prepared in accordance with the PDS Production Process;

Particulars

- A. ASIC refers to and repeats paragraphs 31 and 32 above.
- B. Unsigned compliance checklists relating to the DSAF PDSs: PDS Compliance Checklist, 27 August 2015;
PDS Compliance Checklist, 30 September 2017;
PDS Compliance Checklist, 2 July 2018;
PDS Compliance Checklist, 31 July 2019;
PDS Compliance Checklist, September 2020.

C. Letter from FIMS to ASIC dated 25 July 2025 in response to notice issued pursuant to s 912C of the Corporations Act.

- (d) in relation to the Solaris Mandate, the “Investment Objectives” in Part B of Schedule 2 of the IMA were only guidelines and not legally binding on Solaris;

Particulars

A. ASIC refers to and repeats paragraph 81 above.

- (e) in relation to the Perpetual Fund, FIMS did not receive, took no steps to ensure that it received, and at no point was provided with a complete list of the securities or shareholdings of those Underlying Funds;

Particulars

A. ASIC refers to and repeats paragraphs 93(c) above.

- (f) in relation to the Candriam Fund and Solaris Mandate, although FIMS was provided with a list of the shareholdings held by those Underlying Funds on a monthly or quarterly basis, FIMS did not review the underlying shareholdings of those Underlying Funds before at least March 2021, and even then, at no time was any formal process for reviewing the underlying shareholdings of those Underlying Funds against the Ethical Investment Objectives or ESG Statements instituted;
- (g) in relation to the Candriam Fund and Perpetual Fund, there was no obligation of the Fund Managers to notify FIMS of an investment or shareholding in the Candriam Fund or Perpetual Fund that was inconsistent with the Ethical Investment Objectives or ESG Statements of the DSAF, or that was inconsistent with the investment screens of those Underlying Funds;

Particulars

A. Letter from Ausbil to ASIC dated 31 July 2025 in response to notice issued pursuant to s 912C.

- (h) the ESG Statements in the PDS were not reviewed and compared to the investment strategies of the Underlying Funds, including the investment screens applied by each of the Underlying Funds throughout the Contravention Period (as pleaded at paragraphs 75-77, 81, and 87-90 above), to ensure alignment

between the ESG Statements in the DSAF PDS and the investment strategies of the Underlying Funds; and/or

Particulars

- A. Letter from FIMS to ASIC dated 23 May 2025 in response to notice issued pursuant to s 912C of the Corporations Act.
 - B. Section 19 examination transcript of Mr Burge, 3 April 2025, T32.5-T34.6, T97:6-13.
 - C. Section 19 examination transcript of Mr Gubecka, 25 June 2025, T113.6-T114.8.
- (i) in the premises of paragraphs 117(b) to 117(h) above, the Investment Team, who was responsible for monitoring the investments of the DSAF, did not, and could not, or alternatively did not or could not adequately, monitor the DSAF for compliance with its Ethical Investment Objectives or the ESG Statements.

Particulars

- A. ASIC refers to and repeats paragraph 10 above.
- (j) to the extent the Investment Committee monitored the DSAF it only did so by reference to its financial performance and not its Ethical Investment Objectives or alignment with the ESG Statements; and

Particulars

- A. Investment Committee Minutes:
 - Minutes of meeting held 24 September 2014;
 - Minutes of meeting held 2 August 2018;
 - Minutes of meeting held 1 November 2018;
 - Minutes of meeting held 31 January 2019;
 - Minutes of meeting held 2 May 2019;
 - Minutes of meeting held 1 August 2019;
 - Minutes of meeting held 31 October 2019;
 - Minutes of meeting held 5 February 2020;
 - Minutes of meeting held 30 April 2020;
 - Minutes of meeting held 30 July 2020;
 - Minutes of meeting held 29 October 2020;

Minutes of meeting held 28 January 2021;
 Minutes of meeting held 16 March 2021;
 Minutes of meeting held 29 April 2021;
 Minutes of meeting held 29 July 2021;
 Minutes of meeting held 28 October 2021;
 Minutes of meeting held 4 February 2022;
 Minutes of meeting held 5 May 2022;
 Minutes of meeting held 4 August 2022;
 Minutes of meeting held 3 November 2022;
 Minutes of meeting held 2 February 2023;
 Minutes of meeting held 8 May 2023;
 Minutes of meeting held 3 August 2023;
 Minutes of meeting held 3 November 2023;
 Minutes of meeting held 1 February 2024;
 Minutes of meeting held 10 April 2024;
 Minutes of meeting held 2 May 2024.

- (k) from at least 19 May 2019, FIMS was on notice of the Investor Concerns raised in relation to the underlying holdings of the DSAF not being aligned with the Ethical Investment Objectives and ESG Statements.

Particulars

A. ASIC refers to and repeats paragraphs 106 and 107 above.

118. In the premises of paragraphs 112 to 117 above, each, or alternatively all, of the ESG Statement Representations were false or misleading or deceptive, or were liable to mislead the public.
119. Further, or in the alternative, by publishing the ESG Statements, or failing to correct or qualify those statements, during the Contravention Period, without also publishing the information pleaded at paragraph 101 above, FIMS engaged in conduct that was false or misleading or deceptive, or liable to mislead the public.
120. In the premises of paragraphs 118 and/or 119 above, by making the ESG Statement Representations during the Contravention Period, or alternatively failing to correct or qualify those representations, FIMS engaged in conduct that was misleading or deceptive, or liable to mislead the public as to the nature and/or characteristics of financial services, in contravention of s 12DF of the ASIC Act.

D.2. Systems and Processes Statements Misrepresentations case

121. During the Contravention Period, FIMS published five versions of the DSAF PDS, each of which contained the Systems and Processes Statements.

Particulars

A. ASIC refers to and repeats paragraph 99 above.

122. By making the Systems and Processes Statements during the Contravention Period, and by failing to withdraw or qualify those statements, FIMS represented that:

- (a) the portfolio exposure of the DSAF (including through any Underlying Funds) would be routinely monitored;
- (b) the portfolio exposure of the DSAF (including through any Underlying Funds) would be monitored to ensure that such exposure was in accordance with the ESG Statements; and
- (c) the investment managers making investments on behalf of the DSAF (including through any Underlying Funds) would be constantly monitored to ensure that they maintained their investment styles and processes.

(each a **Systems and Processes Statement Representation**).

123. Each of the Systems and Processes Statement Representations made during the Contravention Period was a continuing representation until the end of the Contravention Period.
124. Each of the Systems and Processes Statement Representations was a representation with respect to a future matter within the meaning of s 12BB of the ASIC Act.
125. At the time of making each of the Systems and Processes Statement Representations during the Contravention Period, and at each time until the end of the Contravention Period, FIMS did not have reasonable grounds for the Systems and Processes Statement Representations by reason of the following matters (insofar as each matter existed at the time the relevant representation was made):
- (a) ASIC relies on paragraph 12BB of the ASIC Act;
 - (b) the matters pleaded at paragraphs 75, 77(b), 78, 81(c) and (d), 87(b), 90, and/or 91 above;

- (c) the DSAF PDS's were not prepared in accordance with the PDS Production Process;

Particulars

- A. ASIC refers to and repeats paragraphs 31 and 32 above.
- B. ASIC refers to and repeats the particulars to paragraph 117 above.
- (d) in relation to the Solaris Mandate, the "Investment Objectives" in Part B of Schedule 2 of the IMA were only guidelines and not legally binding on Solaris;

Particulars

- A. ASIC refers to and repeats paragraph 81 above.
- (e) in relation to the Perpetual Fund, FIMS did not receive, took no steps to ensure that it received, and at no point was provided with a complete list of the securities or shareholdings of those Underlying Funds;

Particulars

- A. ASIC refers to and repeats paragraphs 93(c) above.
- (f) in relation to the Candriam Fund and Solaris Mandate, although FIMS was provided with a list of the shareholdings held by those Underlying Funds on a monthly or quarterly basis, FIMS did not review the underlying shareholdings of those Underlying Funds before at least March 2021, and even then, at no time was any formal process for reviewing the underlying shareholdings of those Underlying Funds against the Ethical Investment Objectives or ESG Statements instituted;
- (g) in relation to the Candriam Fund and Perpetual Fund, there was no obligation of the Fund Managers to notify FIMS of an investment or shareholding in the Candriam Fund or Perpetual Fund that was inconsistent with the Ethical Investment Objectives or ESG Statements of the DSAF, or that was inconsistent with the investment screens of those Underlying Funds;

Particulars

- A. Letter from Ausbil to ASIC dated 31 July 2025 in response to notice issued pursuant to s 912C.

- (h) the ESG Statements in the PDS were not reviewed and compared to the investment strategies of the Underlying Funds, including the investment screens applied by each of the Underlying Funds throughout the Contravention Period (as pleaded at paragraphs 75-77, 81, and 87-90 above), to ensure alignment between the ESG Statements in the DSAF PDS and the investment strategies of the Underlying Funds;

Particulars

- A. Letter from FIMS to ASIC dated 23 May 2025 in response to notice issued pursuant to s 912C of the Corporations Act.
 - B. Section 19 examination transcript of Mr Burge, 3 April 2025, T32.5-T34.6, T97:6-13.
 - C. Section 19 examination transcript of Mr Gubecka, 25 June 2025, T113.6-T114.8.
- (i) in the premises of paragraphs 125(b) to 125(h) above, the Investment Team did not, and could not, or alternatively did not and could not adequately, monitor the DSAF for compliance with its Ethical Investment Objectives or the ESG Statements;
- (j) to the extent the Investment Committee monitored the DSAF it only did so by reference to its financial performance and not its Ethical Investment Objectives or alignment with the ESG Statements;

Particulars

- A. Investment Committee Minutes:
 - Minutes of meeting held 24 September 2014;
 - Minutes of meeting held 2 August 2018;
 - Minutes of meeting held 1 November 2018;
 - Minutes of meeting held 31 January 2019;
 - Minutes of meeting held 2 May 2019;
 - Minutes of meeting held 1 August 2019;
 - Minutes of meeting held 31 October 2019;
 - Minutes of meeting held 5 February 2020;
 - Minutes of meeting held 30 April 2020;
 - Minutes of meeting held 30 July 2020;

Minutes of meeting held 29 October 2020;
 Minutes of meeting held 28 January 2021;
 Minutes of meeting held 16 March 2021;
 Minutes of meeting held 29 April 2021;
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 Minutes of meeting held 5 May 2022;
 Minutes of meeting held 4 August 2022;
 Minutes of meeting held 3 November 2022;
 Minutes of meeting held 2 February 2023;
 Minutes of meeting held 8 May 2023;
 Minutes of meeting held 3 August 2023;
 Minutes of meeting held 3 November 2023;
 Minutes of meeting held 1 February 2024;
 Minutes of meeting held 10 April 2024;
 Minutes of meeting held 2 May 2024.

- (k) from at least 19 May 2019, FIMS was on notice of Investor Concerns raised by investors or Fiducian Financial Planners in relation to the underlying securities or shareholdings of the DSAF not being aligned with the Ethical Investment Objectives and ESG Statements;

Particulars

- A. ASIC refers to and repeats paragraphs 104 and 107 above.
- (l) notwithstanding the Investor Concerns raised with FIMS in relation to the DSAF, as pleaded at paragraphs 106 and 107 above, during the Contravention Period:
- (i) no Complaints or Investor Concerns, or related events or incidents, were lodged in the Tickit system in relation to the DSAF in accordance with the Dispute Resolution Policy;

Particulars

- A. ASIC refers to and repeats paragraphs 36 to 37 and 40 above.

- (ii) no Complaints or Investor Concerns, or related events or incidents, were lodged in the Tickit system in accordance with the Breach and Incident Report Policy;

Particulars

A. ASIC refers to and repeats paragraph 110 above.

- (iii) no Complaints or Investor Concerns, or related events or incidents, were raised or considered by the IRT; and
 - (iv) no steps were taken, or no adequate steps were taken, to address the Investor Concerns.
 - (m) at no time during the Contravention Period did any of the Risk Registers as pleaded in paragraphs 19 above, contain any controls, or alternatively any adequate controls, for monitoring investments of the Underlying Funds or Underlying Managers in respect of the DSAF;
 - (n) at no point during the Contravention Period were any controls implemented to address the obligation in the Compliance Plan pleaded at paragraph 22(e)(i) above, namely, the requirement that FIMS invest investors' monies consistently with the Constitution and PDS of the DSAF.
126. In the premises of paragraphs 112 and 121 to 125 above, each, or alternatively all, of the Process and Systems Statement Representations were false or misleading or deceptive, or were liable to mislead the public.
127. In the premises of paragraph 126 above, by making the Process and Systems Statement Representations during the Contravention Period, or alternatively failing to correct or qualify those representations, FIMS engaged in conduct that was misleading or deceptive, or liable to mislead the public as to the nature and/or characteristics of financial services, in contravention of s 12DF of the ASIC Act.

D.3. Breach of duty of care case

128. During the Contravention Period, FIMS:
- (a) was the Responsible Entity of the DSAF;
 - (b) knew or ought reasonably to have known of the following matters (from the time each matter arose):
 - (i) the Ethical Investment Objectives of the DSAF;

- (ii) the ESG Statements and Systems and Processes Statements in the DSAF PDS's;
- (iii) the representations made in External Communications in relation to the DSAF and in relation to ESG investing by Fiducian, including in the documents pleaded at paragraph 102 above;
- (iv) the matters pleaded at paragraphs 75, 77(b), 78, 81(c) and 81(d), 87(b), 90, and/or 91 above;
- (v) the matters pleaded in paragraphs 125(b) to 125(h) above;
- (vi) from at least 19 May 2019, that Complaints or Investor Concerns had been raised by investors or Fiducian Financial Planners in relation to the alignment of the securities or shareholdings of the Underlying Funds of the DSAF with the DSAF's Ethical Investment Objectives and the ESG Statements of the DSAF PDS;

Particulars

- A. ASIC refers to and repeats paragraphs 106 and 107 above
- (vii) from at least around 5 October 2021, that on that date, a member of the Investment Team made the DSAF Amendment Proposal;

Particulars

- A. ASIC refers to and repeats paragraphs 111 above.
- (c) in its capacity as Responsible Entity, was:
 - (i) responsible through the processes set out in the Investment Governance Framework for monitoring the DSAF;

Particulars

- A. ASIC refers to and repeats paragraphs 10 to 13 above.
- (ii) required to take various steps to address risk categories (or material risks) with the DSAF in accordance with the RMF and RAS;

Particulars

- A. ASIC refers to and repeats paragraphs 14 to 19 above.
- (iii) required to lodge any Incident or Breach in the Tickit system in

accordance with the Incident and Breach Reporting Policy;

Particulars

- A. ASIC refers to and repeats paragraphs 34 and 35.
- (iv) required to have in place controls, or at least adequate controls, to address identified risks or risk categories in its Risk Registers; and

Particulars

- A. ASIC refers to and repeats paragraph 19.
- (v) required to comply with the Compliance Obligations and processes set out in the Compliance Plan.

Particulars

- A. ASIC refers to and repeats paragraphs 21 to 22 above.
129. A reasonable Responsible Entity in FIMS's circumstances, including with its responsibilities and knowledge as pleaded in paragraph 128 above, in acting with care and diligence (as required by s 601FC(1)(b) of the Corporations Act), would have, at all times during the Contravention Period, or at least from 5 October 2021:
- (a) understood that there was a risk that the underlying securities or shareholdings of the DSAF would not align with the DSAF's Ethical Investment Objectives or the ESG Statements in the DSAF's PDS;
 - (b) understood that at least some investors and/or Fiducian Financial Planners did not consider the underlying securities or shareholdings of the DSAF aligned with the DSAF's Ethical Investment Objectives or the ESG Statements in the DSAF's PDS;
 - (c) reviewed the securities or shareholdings of the Underlying Funds to check for their alignment with the DSAF's Ethical Investment Objectives;
 - (d) reviewed the PDS and investment strategies of the Underlying Funds, including the Investment Screens applied by each of the Underlying Funds during the Contravention Period (as pleaded at paragraphs 75-77, 81, and 87-90 above), for compliance with the Ethical Investment Objectives of the DSAF and each or all of the ESG Statements in the DSAF PDS;
 - (e) reviewed External Communications (including those pleaded at paragraph 103

above), and the statements made within those documents, as against the underlying securities or shareholdings of the DSAF and in accordance with the Quality Assurance Process;

(f) employed or engaged a suitably qualified and experienced expert in ESG investing to review, monitor, and/or amend, either:

- (i) the structure of the DSAF, including its Underlying Funds, in order to ensure it complied with the Ethical Investment Objectives, the DSAF Constitution and Compliance Plan; and/or
- (ii) the PDS of the DSAF to ensure that it aligned with the securities or shareholdings of the Underlying Funds of the DSAF and that it did not contain statements that were false or misleading;

(g) recognised that the Underlying Funds of the DSAF did not align with the Ethical Investment Objectives of the DSAF or the ESG Statements in the DSAF PDS; and

(h) taken steps to either:

- (i) cause the Ethical Investment Objectives of the DSAF (in the Compliance Plan and Constitution of the DSAF) to be amended to reflect alignment with the underlying holdings;
- (ii) caused the DSAF PDS to be amended to reflect, and align with, the securities or shareholdings of the Underlying Funds of the DSAF;
- (iii) changed the Underlying Funds of the DSAF;
- (iv) caused the Underlying Managers of the Underlying Funds to change the securities or shareholdings in which they were invested in order to comply, or align, with the Ethical Investment Objectives of the DSAF and each, or alternatively all, of the ESG Statements in the DSAF PDS;
- (v) complied with its internal policies and procedures, including by:
 - (A) creating, and/or entering controls in the Risk Registers to address identified risks or risk categories in relation to the DSAF;
 - (B) creating controls to address the obligations in the Compliance Plan as pleaded at paragraph 22(e) above.
 - (C) lodging Tickit Events in relation to any identified Breach or

Incident in accordance with the Incident and Breach Reporting Policy; and/or

- (vi) ensured that Complaints or Investor Concerns were addressed in accordance with the Dispute Resolution Policy.

130. Throughout the Contravention Period, or at least from 5 October 2021, FIMS:

- (a) failed to take any or all of the steps alleged in paragraph 129 above, and, in the premises:
 - (i) failed to discharge its duties with the degree of care and diligence that a reasonable person would exercise if they were a Responsible Entity in FIMS's position; and
 - (ii) thereby contravened s 601FC(1)(b) of the Corporations Act.

D.4. Failure to comply with Compliance Plan case

- 131. At all relevant times, FIMS, as the Responsible Entity of the DSAF, was required to comply with the Compliance Plan.
- 132. By reason of an obligation in the Compliance Plan, FIMS was required to handle complaints made by investors in the DSAF in accordance with s 912A(2) of the Corporations Act and the Constitution of the DSAF.

Particulars

- A. ASIC refers to and repeats paragraph 22 above.
 - B. Compliance Plan, 26 June 2017, cl 11.16;
Compliance Plan, 14 May 2019, cl 11.16;
Compliance Plan, 8 July 2020, cl 12.16.
133. Notwithstanding that FIMS was aware, or put on notice of the Investor Concerns, as pleaded at paragraphs 106 and 107 above, during the Contravention Period:
- (a) no complaints or concerns were lodged in relation to the DSAF in accordance with the Dispute Resolution Policy;

Particulars

- A. ASIC refers to and repeats paragraphs 36 to 37 and 40 above.
- (b) no complaints or concerns were lodged in Tickit system in accordance with the

Breach and Incident Report Policy;

Particulars

A. ASIC refers to and repeats paragraph 108 above.

(c) no complaints or concerns were raised or considered by the IRT.

134. In the premises of paragraphs 131 to 133, FIMS did not comply with the Compliance Plan.

135. By reason of the matters pleaded at paragraphs 131 to 134, FIMS:

(a) failed to comply with the Compliance Plan in contravention of s 601FC(1)(h) of the Corporations Act; and

(b) further or alternatively, failed to discharge its duties with the degree of care and diligence that a reasonable person would exercise if they were a Responsible Entity in the FIMS's position, in contravention of s 601FC(1)(b) of the Corporations Act.

SIGNATURE OF LEGAL REPRESENTATIVE

This statement of claim does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record
ANNA ROSS, BY HER PARTNER,
ANDREW KORBEL

Date of signature

2 October 2025

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Level 5 Law Courts Building, 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3 SYDNEY NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Natalie Colbert
 Address Level 5, 100 Market Street
 SYDNEY NSW 2000
 Occupation Litigation Counsel, Civil Litigation
 Date 2 October 2025

I swear:

- 1 I am a solicitor employed by the plaintiff and hold the role of Litigation Counsel, Civil Litigation.
- 2 I am authorised to make this affidavit on behalf of the plaintiff.
- 3 I believe that the allegations of fact in the statement of claim are true.

SWORN at

Avoca Beach

Signature of deponent

Name of witness

Molly Tredinnick

Address of witness

Level 37, Quay Quarter Tower, 50 Bridge St, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

This document was signed and witnessed over audio visual link in accordance with s 14G of the *Electronic Transactions Act 2000*.

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name Australian Securities and Investments Commission

Address Level 5
100 Market Street
SYDNEY NSW 2000

Legal representative for plaintiff

Name Anna Ross

Practising certificate number 38807

Firm Corrs Chambers Westgarth

Contact solicitor Kate Gill-Herdman

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Telephone +61 2 9210 6904

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Kate.Gill-Herdman@corrs.com.au

DETAILS ABOUT DEFENDANT**Defendant**

Name Fiducian Investment Management Services Limited ABN 28
602 441 814

Address Level 4
1 York Street
SYDNEY NSW 2000

